

GENERAL LAWS
OF THE
STATE OF IDAHO



PASSED BY
THE FIRST REGULAR SESSION OF THE
SIXTIETH IDAHO LEGISLATURE

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Volume 1

**Idaho Official Directory and Roster of State Officials and Members
of State Legislature follows the Index.**

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SECRETARY OF STATE

BEN YSURSA
Secretary of State
Boise, Idaho

CHAPTER 1
(S.B. No. 1016)

AN ACT

RELATING TO APPROPRIATIONS AND TRANSFERS OF FUNDS; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated and the State Controller shall transfer \$511,400 from the General Fund to the Pest Control Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Plant Industries Program in the Department of Agriculture pursuant to Section 22-2019, Idaho Code.

SECTION 2. There is hereby appropriated and the State Controller shall transfer \$58,300 from the General Fund to the Hazardous Substance Emergency Response Fund. Such moneys shall be used to reimburse costs incurred by the Bureau of Homeland Security in the Military Division of the Office of the Governor pursuant to Section 39-7110, Idaho Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 10, 2009.

CHAPTER 2
(H.B. No. 3)

AN ACT

RELATING TO CORPORATION INCOME TAXES; AMENDING SECTION 63-3027B, IDAHO CODE, TO REVISE STANDARDS FOR MAKING THE WATER'S-EDGE ELECTION ON BEHALF OF MEMBERS OF THE WATER'S-EDGE COMBINED GROUP; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3027B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027B. WATER'S-EDGE ELECTION. (a) ~~Notwithstanding the provisions of subsections (s) and (t) of section 63-3027, Idaho Code, a~~ qualified taxpayer, as defined in paragraph (3) of subsection (b) of this section whose income is subject to the tax imposed under this chapter, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this chapter, as modified by sections 63-3027B through 63-3027E, Idaho Code. A taxpayer who makes a water's-edge election shall take into account the income and apportionment factors of ~~only~~ all affiliated corporations in a unitary relationship with the taxpayer, other than corporations filing elections under section 936 of the Internal Revenue Code, and which either file a federal income tax return under the Internal Revenue Code or are included in a federal consolidated return.

(b) For purposes of this section:

(1) The phrase "over fifty percent (50%) of the voting stock directly or indirectly owned or controlled" shall be substituted for the phrase "at least eighty percent (80%)" each place it appears in section 1504 of the Internal Revenue Code.

(2) Any combined return shall include only corporations the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners.

(3) A "qualified taxpayer" is a corporation which files, with the state income tax return on which the water's-edge election is made, a consent to the reasonable production of documents within the taxing jurisdiction. The consent shall remain in effect so long as the water's-edge election is in effect.

(4) "Water's-edge combined group" shall mean all corporations or entities properly includable in the election of a taxpayer in subsection (a) of this section.

(5) The only income of a foreign sales corporation to be taken into account shall be the income subject to federal taxation, taking into account the provisions of section 921 of the Internal Revenue Code.

(6) For each corporation within the combined group subject to tax by this chapter, a water's-edge election will be deemed to have been filed and consent given under paragraph (3) of this subsection upon the filing of a valid water's-edge election by any qualified taxpayer of the combined group. If during the period a water's-edge election is in effect, another corporation subject to tax by this state becomes a part of the combined group, the corporation is deemed to have made a water's-edge election and given consent under paragraph (3) of this subsection.

(c) A water's-edge election may be disregarded, and the income of the taxpayer determined without regard to the provisions of this section pursuant to those conditions which may be required by the state tax commission under subsection (b) of section 63-3027C, Idaho Code, if any corporation fails to comply with:

- (1) The domestic disclosure spreadsheet filing requirements defined in section 63-3027E, Idaho Code; or
- (2) This state's legal and procedural requirements.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2009.

Approved February 18, 2009.

CHAPTER 3
(H.B. No. 11)

AN ACT

RELATING TO FILING TAX RETURNS ELECTRONICALLY; AMENDING SECTION 63-2406, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION MAY BY RULE REQUIRE ANY MOTOR FUELS DISTRIBUTOR REPORTING AT LEAST TWENTY-FIVE RECEIPTS OR DISBURSEMENTS OF MOTOR FUEL DURING THE PERIOD TO WHICH THE RETURN RELATES, TO TRANSMIT RETURNS ELECTRONICALLY AND TO PROVIDE REQUIREMENTS OF THE RULES; AND AMENDING SECTION 63-3037, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION MAY BY RULE REQUIRE THAT INCOME TAXPAYERS WHO FILE AT LEAST TWO HUNDRED FIFTY INFORMATION RETURNS, TO TRANSMIT RETURNS ELECTRONICALLY AND TO PROVIDE REQUIREMENTS OF THE RULES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-2406, Idaho Code, be, and the same is hereby amended to read as follows:

63-2406. DISTRIBUTOR REPORTS. (1) Each distributor shall, not later than the last day of each calendar month or for such other reporting period as the commission may authorize, render to the commission an accurate report of all motor fuel received by him in this state during the preceding reporting period. The report shall be made in the manner and on forms required by the commission.

(2) The distributor's report shall include:

(a) An itemized statement of the total number of gallons of motor fuel received during the preceding calendar month; and

(b) Other information as the commission may require for the proper administration of this chapter.

(3) The report shall be accompanied by a remittance of the tax shown to be due on the report together with any applicable interest and penalty, unless the amounts due are paid by electronic funds transfer in the manner provided by section 67-2026, Idaho Code.

(4) Any distributor required to pay the tax imposed by this chapter who fails to pay such tax shall be liable to the commission for the amount of tax not remitted plus any applicable penalty or interest. The commission may collect such amounts in the manner provided in section 63-2434, Idaho Code.

(5) The commission may prescribe rules providing standards consistent with section 63-115, Idaho Code, for determining which returns must be transmitted electronically. The commission may not require any person to transmit returns electronically unless such person is required to report on the return at least twenty-five (25) transactions involving the receipt or disbursement of motor fuel during the period to which the return relates. In promulgating such rules, the commission shall take into account, among other relevant factors, the ability of the taxpayer to comply, at a reasonable cost, with the requirements of such rules.

SECTION 2. That Section 63-3037, Idaho Code, be, and the same is hereby amended to read as follows:

63-3037. INFORMATION RETURNS. (a) All persons, in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries and employers, making payment to another person of interest, rent, salaries, wages, except as provided by subsection (b) of section 63-3035, Idaho Code, and section 63-3036, Idaho Code, premiums, annuities, compensation, remunerations, emoluments, payments to subcontractors, other fixed or determinable gains, profits and income, or corporate liquidation distributions shall make returns to the state tax commission setting forth the amount of such gains, profits and income, and the name and address of the recipient of such payment. Such returns shall correspond to the requirements of the Internal Revenue Code.

(b) The state tax commission may, by regulation, excuse the filing of any returns required by subsection (a) of this section when it finds that the returns required of any class or group of persons do not contribute to the efficient administration of the taxes imposed by this chapter.

(c) The commission may prescribe rules providing standards consistent with section 63-115, Idaho Code, for determining which returns must be transmitted electronically. The commission may not require any person to transmit returns electronically unless such person is required to report on the return at least two hundred fifty (250) annual information returns. In promulgating such rules, the commission shall take into account, among other relevant factors, the ability of the taxpayer to comply, at a reasonable cost, with the requirements of such rules.

Approved February 18, 2009.

CHAPTER 4
(H.B. No. 12)

AN ACT

RELATING TO TAXES ON BEER AND WINE; AMENDING SECTION 23-1047, IDAHO CODE, TO STRIKE OBSOLETE LANGUAGE AND TO ALLOW THE STATE TAX COMMISSION TO PROMULGATE RULES AUTHORIZING PAYMENT OF BEER TAXES BY RETURN FOR A PERIOD OTHER THAN MONTHLY AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 23-1322, IDAHO CODE, TO MAKE A CODIFIER'S CORRECTION AND TO ALLOW THE STATE TAX COMMISSION TO PROMULGATE RULES AUTHORIZING PAYMENT OF WINE TAXES BY RETURN FOR PERIODS OTHER THAN MONTHLY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-1047, Idaho Code, be, and the same is hereby amended to read as follows:

23-1047. ~~ALTERNATIVE METHOD FOR PAYMENT OF TAXES ON BEER. (1) In lieu of the use of tax stamps to evidence the payment of taxes imposed on beer by this state, the state tax commission may authorize payment of said taxes by use of an alternative method whereby~~ Each person liable for payment of taxes on beer, as provided for in section 23-1048, Idaho Code, shall, on or before the 15th day of each month, or for such other period as the state tax commission may prescribe by rule, file a written report with the state tax commission showing all sales of beer for resale or consumption in this state made by such person during the calendar month or other period immediately preceding. Taxes payable with respect to such sales shall be paid by the person liable therefor at the time such report is filed.

~~(2) When use of said alternative method shall be authorized the provisions and requirements contained in sections 23-1048 through 23-1055 shall apply and shall be observed.~~

SECTION 2. That Section 23-1322, Idaho Code, be, and the same is hereby amended to read as follows:

23-1322. MONTHLY REPORTS OF SALES -- PAYMENT OF EXCISE TAX WITH REPORT. Each person liable for the payment of taxes on wine as provided for in section 23-1319, Idaho Code, shall, on or before the fifteenth day of each month, or for such other period as the state tax commission may prescribe by rule, file a written report with the state tax commission showing all sales of wine for resale or consumption in this state made by such person during the calendar month or other period immediately preceding. Taxes payable with respect to such sale shall be paid by the person liable therefor at the time such report is filed.

Approved February 18, 2009.

CHAPTER 5
(H.B. No. 15)

AN ACT

RELATING TO THE DEPARTMENT OF ADMINISTRATION AND THE DIVISION OF PUBLIC WORKS; REPEALING SECTION 67-3206, IDAHO CODE, RELATING TO THE INVENTORY OF REAL PROPERTY OWNED OR LEASED BY THE STATE IN BOISE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-3206, Idaho Code, be, and the same is hereby repealed.

Approved February 18, 2009.

CHAPTER 6
(H.B. No. 13)

AN ACT

RELATING TO THE DEPARTMENT OF ADMINISTRATION; REPEALING SECTION 59-1205, IDAHO CODE, RELATING TO THE POSITION OF PERSONNEL GROUP INSURANCE ADMINISTRATOR; AND REPEALING SECTION 59-1212, IDAHO CODE, RELATING TO EXISTING GROUP POLICIES AND CONTRACTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-1205, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 59-1212, Idaho Code, be, and the same is hereby repealed.

Approved February 18, 2009.

CHAPTER 7
(H.B. No. 4)

AN ACT

RELATING TO PROPERTY TAX EXEMPTION FOR HOMESTEADS; AMENDING SECTION 63-602G, IDAHO CODE, TO REQUIRE THAT THE STATE TAX COMMISSION SHALL PUBLISH ADJUSTMENTS TO THE MAXIMUM AMOUNT SUBJECT TO PROPERTY TAX EXEMPTION TO REFLECT ANNUAL CHANGES IN THE COST-OF-LIVING FLUCTUATIONS BY A PERCENTAGE EQUAL AS NEAR AS PRACTICABLE TO THE ANNUAL CHANGE IN THE IDAHO HOUSING PRICE INDEX AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD. (1) During the tax year 2006 and each year thereafter, subject to annual adjustment as provided herein, the first seventy-five thousand dollars (\$75,000) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, or fifty percent (50%) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, whichever is the lesser, shall be exempt from property taxation. Beginning for tax year 2007, the state tax commission shall publish adjustments to the maximum amount subject to property tax exemption to reflect cost-of-living fluctuations. The adjustments shall effect changes in the amount subject to tax exemption by a percentage equal as near as practicable to the annual ~~increase~~ change in the Idaho housing price index as determined by the United States office of federal housing enterprise oversight. The state tax commission shall publish the adjustments required by this subsection each and every year the office of federal housing enterprise oversight announces a change in the Idaho housing price index. The adjust-

ments shall be published no later than October 1 of each year and shall be effective for claims filed in and for the following property tax year. The publication of adjustments under this subsection shall be exempt from the provisions of chapter 52, title 67, Idaho Code, but shall be provided to each county and to members of the public upon request and without charge.

(2) The exemption allowed by this section may be granted only if:

(a) The homestead is owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the homestead is owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption. The homestead may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in a homestead, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the homestead is his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other homestead in the county.

(d) For the purpose of this section, the definition of "owner" shall be the same definition set forth in section 63-701(7), Idaho Code.

When an "owner," pursuant to the provisions of section 63-701(7), Idaho Code, is any person who is the beneficiary of a revocable or irrevocable trust, or who is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company, or corporation in the manner set forth in section 63-703(4), Idaho Code.

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in section 63-703(4), Idaho Code, that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(6), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner or beneficiary, partner, member or shareholder, as appropriate, still occupies the same homestead for which the owner made application.

(c) The homestead described in subsection (3)(b) of this section is owner-occupied or occupied by a beneficiary, partner, member or shareholder, as appropriate, and used as the primary dwelling place of the owner or beneficiary, partner, member or shareholder, as appropriate,

as of January 1; provided however, that in the event the homestead is owner-occupied after January 1, but before April 15, the owner of the property is entitled to the exemption.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) Recovery of property tax exemptions allowed by this section but improperly claimed or approved:

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed or approved, the county assessor shall decide whether the exemption claimed should have been allowed and if not, notify the taxpayer in writing, assess a recovery of property tax and notify the county treasurer of this assessment. If the county assessor determined that an exemption was improperly approved as a result of county error, the county assessor shall present the discovered evidence, facts or circumstances from the improperly approved exemption to the board of county commissioners, at which time the board may waive a recovery of the property tax and notify such taxpayer in writing.

(b) When information indicating that an improper claim for the exemption allowed by this section is discovered by the state tax commission, the state tax commission may disclose this information to the appropriate county assessor, board of county commissioners and county treasurer. Information disclosed to county officials by the state tax commission under this subsection may be used to decide the validity of any entitlement to the exemption provided in this section and is not otherwise subject to public disclosure pursuant to chapter 3, title 9, Idaho Code.

(c) The assessment and collection of the recovery of property tax must begin within the seven (7) year period beginning the date the assessment notice reflecting the improperly claimed or approved exemption was required to be mailed to the taxpayer.

(d) The taxpayer may appeal to the board of county commissioners the decision by the county assessor to assess the recovery of property tax within thirty (30) days of the date the county assessor sent the notice to the taxpayer pursuant to this section. The board may waive the collection of all or part of any costs, late charges and interest, in order to facilitate the collection of the recovery of the property tax.

(e) For purposes of calculating the tax, the amount of the recovered property tax shall be for each year the exemption allowed by this section was improperly claimed or approved, up to a maximum of seven (7) years. The amount of the recovery of property tax shall be calculated using the product of the amount of exempted value for each year multiplied by the levy for that year plus costs, late charges and interest for each year at the rates equal to those provided for delinquent property taxes during that year.

(f) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(g) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(h) Thirty (30) days after the taxpayer is notified, as provided in subsection (5) (a) of this section, the assessor shall record a notice of intent to attach a lien. Upon the payment in full of such recovered

property taxes prior to the attachment of the lien as provided in subsection (5) (i) of this section, or upon the successful appeal by the taxpayer, the county assessor shall record a rescission of the intent to attach a lien within seven (7) business days of receiving such payment or within seven (7) business days of the county commissioners' decision granting the appeal. If the real property is sold to a bona fide purchaser for value, prior to the recording of the notice of the intent to attach a lien, the county assessor and treasurer shall cease the recovery of such unpaid recovered property tax.

(i) Any unpaid recovered property taxes shall become a lien upon the real property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section.

(j) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

(6) The legislature declares that this exemption is necessary and just.

(7) A homestead, having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to: the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code, or because the homestead has been leased because the owner, beneficiary, partner, member or shareholder is absent in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone by the owner, beneficiary, partner, member or shareholder, as appropriate, as defined in section 112 of the Internal Revenue Code, and such homestead would have otherwise qualified under this section, then the board of county commissioners of the county in which the homestead is located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2009.

Approved February 19, 2009.

CHAPTER 8
(H.B. No. 6)

AN ACT

RELATING TO THE BUNKER HILL CLEANUP SITE; AMENDING SECTION 39-107A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN REAL PROPERTY OR INTERESTS IN SUCH PROPERTY ASSOCIATED WITH THE BUNKER HILL CLEANUP SITE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-107A, Idaho Code, be, and the same is hereby amended to read as follows:

39-107A. REAL PROPERTY IN BUNKER HILL CLEANUP SITE. Notwithstanding any other provision of law to the contrary, the department may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning any op-

erable unit of the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. The department may, in its sole discretion, manage, lease or dispose of such property for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development ~~of the Silver Valley~~ or assisting local governmental entities within the site. The management, lease or disposal of such property shall not be subject to chapter 3, title 58, Idaho Code. Any receipts from the management, lease or disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment M, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

Approved February 19, 2009.

CHAPTER 9
(H.B. No. 7)

AN ACT

RELATING TO PROCESSING OF PERMITS, APPLICATIONS, SITING REPORTS AND STUDIES FOR ELECTRIC TRANSMISSION FACILITIES; AMENDING CHAPTER 5, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-516, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE THAT THE PUBLIC UTILITIES COMMISSION SHALL DETERMINE WHETHER AN APPLICATION TO CONSTRUCT ELECTRIC TRANSMISSION FACILITIES SHOULD BE DESIGNATED AS A PRIORITY PROJECT, TO REQUIRE STATE AGENCIES TO TIMELY COMPLETE THEIR REVIEW OF APPLICATIONS TO CONSTRUCT ELECTRIC TRANSMISSION FACILITIES, TO PROVIDE FACTORS FOR THE COMMISSION UPON WHICH TO BASE ITS FINDINGS AND TO PROVIDE FOR PROCEDURES AND RULES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 5, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-516, Idaho Code, and to read as follows:

61-516. PRIORITY DESIGNATION FOR ELECTRIC TRANSMISSION PROJECTS. (1) The legislature finds that the timely review and permitting of electric transmission facilities is critical to the well-being of the citizens and the economy of this state and the region. The legislature further finds that enactment of this section is necessary to promote the public interest. The purpose of this section is for the public utilities commission to determine whether the construction of electric transmission facilities should be designated to receive priority processing by state agencies. This section is not intended to affect a state agency's decision-making authority to approve, deny or condition an application to construct electric transmission facilities.

(2) For purposes of this section the following definitions shall apply:

(a) "Electric transmission facilities" means the construction of high voltage transmission lines with an operating level capacity of two hundred thirty thousand (230,000) volts or more and associated substations and switchyards.

(b) "State agency" means every state department, division, commission or board.

(3) Any person intending to construct eligible electric transmission facilities in Idaho may file an application with the public utilities commission seeking priority designation. An order granting priority designation shall not constitute regulatory approval or bind any state agency. If the commission issues an order granting priority designation, state agencies subsequently involved in the permitting or siting processes for such electric transmission facilities shall be required to give the application priority or immediate attention as it relates to reviews, permits, reports, studies or comments.

(4) In reviewing an application for priority designation, the public utilities commission shall base its findings on whether the proposed construction of electric transmission facilities will:

- (a) Benefit Idaho customers and the Idaho economy;
- (b) Improve electric transmission capacity and reliability in Idaho and the region; and
- (c) Promote the public interest.

(5) Applications for priority designation filed with the public utilities commission shall be governed by the commission's rules of administrative procedure. The commission may promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, or may issue procedural orders necessary to implement this section.

Approved February 19, 2009.

CHAPTER 10
(S.B. No. 1009)

AN ACT

RELATING TO VETERANS SERVICES; AMENDING SECTION 65-202, IDAHO CODE, TO PROVIDE THE ADMINISTRATOR OF VETERANS SERVICES ADDITIONAL POWER AND AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 65-202, Idaho Code, be, and the same is hereby amended to read as follows:

65-202. POWERS AND DUTIES. The administrator of the division of veterans services shall have full power and authority on behalf of the state of Idaho, in recognition of the services rendered by veterans of the armed forces of the United States, to:

(1) Oversee the management and operation of the veterans homes in the state and the state veterans cemetery, and provide care to veterans of the armed forces of the United States under such rules as the administrator may, from time to time, adopt.

(2) Extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such disabled or destitute wartime veterans as the commission shall determine to be reasonably required under such rules as the administrator may, from time to time, adopt.

(3) Collect benefits paid by the United States department of veterans affairs for burial and plot allowance for persons interred at the state veterans cemetery.

(4) Prescribe, with the approval of the commission, the qualifications of all personnel in accordance with the Idaho personnel system law. The administrators in charge of state veterans homes, the office of veterans advocacy, and the state veterans cemetery, shall be considered nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho

Code, and shall serve at the pleasure of the administrator of the division of veterans services.

(5) Accept gifts, grants, contributions and bequests of funds, and personal property to the state of Idaho for the benefit of veterans of the armed forces of the United States.

(6) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of services to veterans of the armed forces of the United States.

(7) Administer, with the advice and approval of the commission, moneys in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(8) Establish by rule charges related to interment, disinterment and reinterment in the state veterans cemetery and the administrator is hereby directed to cause such charges to be deposited in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(9) In his discretion, assume control of the cremated remains of deceased persons qualified for interment in the state veterans cemetery, apply for burial and plot allowance benefits paid by the United States department of veterans affairs for such deceased persons and inter in the state veterans cemetery the cremated remains of deceased persons qualified for interment in the state veterans cemetery.

(10) Administer programs offered by the United States department of veterans affairs for the certification and supervision of educational and training opportunities for veterans.

Approved February 26, 2009.

CHAPTER 11
(S.B. No. 1044)

AN ACT

RELATING TO CODIFIER'S CORRECTIONS IN STATUTES; AMENDING SECTION 2-502, IDAHO CODE, TO DELETE REFERENCE TO AN ARCHAIC CODE SECTION; AMENDING SECTION 7-720, IDAHO CODE, TO DELETE REFERENCE TO ARCHAIC CODE SECTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 11-102, IDAHO CODE, TO DELETE REFERENCE TO AN ARCHAIC CODE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-3-201, IDAHO CODE, TO MAKE CODIFIER'S CORRECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-915, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO DELETE ARCHAIC LANGUAGE; REPEALING SECTION 32-413, IDAHO CODE, RELATING TO MEDICAL CERTIFICATES; AMENDING SECTION 33-2739, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE REGARDING LEVIES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-2815, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-3701, IDAHO CODE, TO ADD REFERENCE TO LEWIS-CLARK STATE COLLEGE AND BOISE STATE UNIVERSITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-5205, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 33-5212, IDAHO CODE, RELATING TO REVIEW OF CHARTER SCHOOLS; AMENDING SECTION 39-2903, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING THE HEADING FOR CHAPTER 2, TITLE 47, IDAHO CODE; AMENDING SECTIONS 47-306 AND 47-307, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 49-114, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-123, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-402, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-909, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2702, IDAHO CODE, TO MAKE

A TECHNICAL CORRECTION; AMENDING SECTION 63-201, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-510, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 63-1703, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 2-502, Idaho Code, be, and the same is hereby amended to read as follows:

2-502. GRAND JURY -- HOW CONSTITUTED -- QUORUM. Sixteen (16) persons shall constitute a grand jury, twelve (12) of whom shall constitute a quorum, and when of the jurors summoned, no more nor less than sixteen (16) attend they shall constitute the grand jury. If more than sixteen (16) attend the clerk shall call over the list summoned, and the sixteen (16) first answering shall constitute the grand jury. If less than sixteen (16) attend, the panel may be filled to sixteen (16) ~~as provided in section 2-410.~~

SECTION 2. That Section 7-720, Idaho Code, be, and the same is hereby amended to read as follows:

7-720. APPLICATION TO MUNICIPALITIES. Nothing in this code must be construed to abrogate or repeal any statute provided for the taking of property in any municipality for street purposes. Any municipality at its option may exercise the right of eminent domain under the provisions of this chapter for any of the uses and purposes mentioned in ~~sections 50-1124 and 50-1125, in like manner and to the same extent as for any of the purposes mentioned in section 7-701, Idaho Code.~~

SECTION 3. That Section 11-102, Idaho Code, be, and the same is hereby amended to read as follows:

11-102. FORM OF WRIT. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk, and be directed to the sheriff, and it must intelligently refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money, or currency, ~~as provided in section 10-1104,~~ the execution must also state the kind of money or currency in which the judgment is payable, and must require the sheriff substantially as follows:

(1-) If it be against the property of the judgment debtor, it must require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property ~~can not~~ cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

(2-) If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the sheriff to satisfy the judgment, with interest, out of such property.

(3-) If it be against the person of the judgment debtor, it must require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

(4-) If it be issued on a judgment made payable in a specified kind of money or currency, ~~as provided in section 10-1104,~~ it must also require the sheriff to satisfy the same in the kind of money or currency in which the

judgment is made payable, and the sheriff must refuse payment in any other kind of money or currency; and in case of levy and sale of property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three (3) times the amount of the money so collected.

(5-) If it be for the delivery of the possession of real or personal property, it must require the sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein, if a delivery thereof ~~can not~~ cannot be had; and if sufficient personal property ~~can not~~ cannot be found, then out of the real property, as provided in ~~the first subdivision~~ subsection (1) of this section.

SECTION 4. That Section 15-3-201, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-201. VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS -- LOCATION OF PROPERTY. (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) ~~in~~ the county where the decedent had his domicile at the time of his death; or

(2) ~~if~~ the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceedings occurred, unless the initial proceeding has been transferred as provided in section 15-1-303 of this code or subsection (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving ~~non-domiciliaries~~ nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a ~~non-domiciliary~~ nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

SECTION 5. That Section 18-915, Idaho Code, be, and the same is hereby amended to read as follows:

18-915. ASSAULT OR BATTERY UPON CERTAIN PERSONNEL -- PUNISHMENT. (1) Any person who commits a crime provided for in this chapter against or upon a justice, judge, magistrate, prosecuting attorney, public defender, peace officer, bailiff, marshal, sheriff, police officer, correctional officer, employee of the department of correction, employee of a private prison contractor while employed at a private correctional facility in the state of Idaho, employees of the department of water resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code, jailer, parole officer, misdemeanor probation officer, officer of the Idaho state police, fireman,

social caseworkers or social work specialists of the department of health and welfare, employee of a state secure confinement facility for juveniles, employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer, emergency medical technician certified by the department of health and welfare, emergency medical technician-ambulance certified by the department of health and welfare, advanced emergency medical technician and EMT-paramedic certified by the state board of medicine, a member, employee or agent of the state tax commission, United States marshal, or federally commissioned law enforcement officer or their deputies or agents and the perpetrator knows or has reason to know of the victim's status, the punishment shall be as follows:

(a) For committing battery with intent to commit a serious felony the punishment shall be imprisonment in the state prison not to exceed twenty-five (25) years.

(b) For committing any other crime in this chapter the punishment shall be doubled that provided in the respective section, except as provided in subsections (2) and (3) of this section.

(2) For committing a violation of the provisions of section 18-901 or 18-903, Idaho Code, against the person of a former or present justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or a county jail, or of a private correctional facility, or of an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer: ~~misdemeanor probation officer~~

(a) Because of the exercise of official duties or because of the victim's former or present official status~~;~~ or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a private correctional facility, an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer~~;~~

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

(3) For committing a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present peace officer, sheriff or police officer:

(a) Because of the exercise of official duty or because of the victim's former or present official status~~;~~ or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer, sheriff or police officer~~;~~

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

SECTION 6. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (a) ~~or (5)~~, Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) May be sentenced to jail for a term not to exceed six (6) months;

(b) May be fined an amount not to exceed one thousand dollars (\$1,000);
(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and five (5) days of which must be served in jail, as required by 23 U.S.C. section 164, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed two thousand dollars (\$2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system,

as provided in section 18-8008, Idaho Code, following the one (1) year mandatory license suspension period.

(g) If the person has pled guilty or was found guilty for the second time within ten (10) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(5) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed ten (10) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which must be served in jail, as required by 23 U.S.C. section 164; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars (\$5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period.

(6) For the purpose of computation of the enhancement period in subsections (4), (5) and (7) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(7) Notwithstanding the provisions of subsections (4) and (5) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, a violation of the provisions of section 18-4006 3. (b), Idaho Code, or any substantially conforming foreign criminal felony violation, and within fifteen (15) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (5) of this section.

(8) For the purpose of subsections (4), (5) and (7) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determina-

tion of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(9) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare; provided however, if the defendant has no prior or pending charges with respect to the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the records and information required under subsections (10) (a), (b) and (c) of this section or possesses information from other reliable sources relating to the defendant's use or nonuse of alcohol or drugs which does not give the court any reason to believe that the defendant regularly abuses alcohol or drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of section 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of an alcohol evaluation with respect to a defendant's violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or other assessment which evaluates the defendant's degree of alcohol abuse and need for alcohol treatment conducted within twelve (12) months preceding the date of the defendant's sentencing. In the event an alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(10) At the time of sentencing, the court shall be provided with the following information:

- (a) The results, if administered, of any evidentiary test for alcohol and/or drugs;
- (b) A computer or teletype or other acceptable copy of the person's driving record;
- (c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

(d) The alcohol evaluation required in subsection (9) of this section, if any.

(11) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(12) In the event that the alcohol evaluation required in subsection (9) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(13) Any person who is disqualified, or whose driving privileges have been suspended, revoked or canceled under the provisions of this chapter, shall not be granted restricted driving privileges to operate a commercial motor vehicle.

SECTION 7. That Section 32-413, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 33-2739, Idaho Code, be, and the same is hereby amended to read as follows:

33-2739. SCHOOL-COMMUNITY LIBRARY DISTRICTS -- BOARD OF TRUSTEES -- POWERS AND DUTIES -- FISCAL YEAR. (1) The board of trustees of the school-community library district shall perform the duties required of, and have the power and authority granted to library district trustees pursuant to this chapter, including the authority to levy upon the taxable property in the school-community library district an annual tax not to exceed six hundredths ~~per cent~~ percent (.06%) of market value for assessment purposes for establishing and maintaining public library services. The school-community library district board shall have exclusive control of the school-community library district fund and shall cause to be made a full and complete audit of the books and accounts of the district as provided for in section 33-2726, Idaho Code.

(2) ~~To bring the fiscal year of school community library districts into conformity with the fiscal year of library districts, fiscal year 1994 for school community library districts shall be defined as beginning on July 1, 1993 and ending on September 30, 1994. To fund school community library district operations from July 1, 1993 through September 30, 1994:~~

~~(a) The four (4) existing school community library districts are authorized to budget for the fifteen (15) month period;~~
~~(b) The county commissioners of the relevant counties are authorized to set the levy for the fifteen (15) month period for the four (4) existing school community library districts;~~
~~(c) The state tax commission is authorized to approve the levy for the fifteen (15) month period for the four (4) existing school community library districts;~~
~~(d) The relevant counties are authorized to collect ad valorem taxes for the fifteen (15) month period for the relevant existing school community library districts within each county's boundaries;~~
~~(e) For the fifteen (15) month period only, the maximum allowable levy for school community library districts shall be seven and one-half hundredths percent (.075%) of market value for assessment purposes.~~
This subsection (2) shall be void and of no further force and effect on and after September 30, 1994.

~~(3)~~ On and after fiscal year 1995, school-community library districts shall have a fiscal year of October 1 through September 30.

SECTION 9. That Section 33-2815, Idaho Code, be, and the same is hereby amended to read as follows:

33-2815. PRACTICAL PROSPECTING AND PRACTICAL MINING -- COURSES IN. The board of regents of the University of Idaho, and of the Idaho ~~bureau of mines and geology~~ geological survey may prescribe a special course of instructions in practical prospecting, including a short course in practical mining including identification and classification of minerals at the University of Idaho, or in a mobile unit of the school of mines, which shall be open to special students desirous of studying such subjects, but who may be ineligible for admission to enter the University of Idaho on account of having deficient entrance credits.

SECTION 10. That Section 33-3701, Idaho Code, be, and the same is hereby amended to read as follows:

33-3701. CONTRACTS FOR HOUSING FACILITIES AT STATE INSTITUTIONS. The state board of education and board of regents of the University of Idaho, acting as the board of regents of the University of Idaho, or as the board of trustees of the Lewis-Clark ~~Normal School~~ State College, or as the board of trustees of the Boise State University, or as the board of trustees of the Idaho State University are hereby authorized to enter into contracts with persons, firms and corporations, for the purpose of providing dormitory and housing facilities for the students of said institutions; for ~~said the~~ purposes ~~said the~~ board may contract for the leasing and purchase of lands and buildings and for the purchase and installation of fixtures, furniture, furnishings and equipment in such buildings; ~~said the~~ board may contract to pay as rent or otherwise a sum sufficient to pay, on the amortization plan, the principal and interest thereon, of the purchase-price of lands and buildings, such contracts to run not over twenty (20) years; the rate of interest on the principal on any purchase shall not exceed seven ~~percent~~ percent (7%) per annum payable ~~semi-annually~~ semiannually or annually.

SECTION 11. That Section 33-5205, Idaho Code, be, and the same is hereby amended to read as follows:

33-5205. PETITION TO ESTABLISH PUBLIC CHARTER SCHOOL. (1) Any group of persons may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school.

(a) A petition to establish a new public charter school, including a public virtual charter school, shall be signed by not fewer than thirty (30) qualified electors of the attendance area designated in the petition. Proof of elector qualifications shall be provided with the petition.

(b) A petition to establish a new public virtual school must be submitted directly to the public charter school commission. A petition to establish a new public charter school, other than a new public virtual school, shall first be submitted to the local board of trustees in which the public charter school will be located. A petition shall be considered to be received by an authorized chartering entity as of the next scheduled meeting of the authorized chartering entity after submission of the petition.

(c) The board of trustees may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter; or (iii) refer the petition to the public charter school commission, but such referral shall not be made until the local board has documented its due diligence in considering the petition. Such documentation shall be submitted with the petition to the public charter school commission. If the petitioners and the local board of trustees have not reached mutual agreement on the provisions of the charter, after a reasonable and good faith effort, within sixty (60) days from the date the charter petition is received, the petitioners may withdraw their petition from the local board of trustees and may submit their charter petition to the public charter school commission, provided it is signed by thirty (30) qualified electors as required by subsection (1) (a) of this section. Documentation of the reasonable and good faith effort between the petitioners and the local board of trustees must be submitted with the petition to the public charter school commission.

(d) The public charter school commission may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter.

(e) A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by not fewer than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not fewer than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(2) Not later than sixty (60) days after receiving a petition signed by thirty (30) qualified electors as required by subsection (1) (a) of this section, the authorized chartering entity shall hold a public hearing for the purpose of discussing the provisions of the charter, at which time the authorized chartering entity shall consider the merits of the petition and the level of employee and parental support for the petition. In the case of a petition submitted to the public charter school commission, such public hearing must be not later than sixty (60) days after receipt of the petition, which may be extended to ninety (90) days if both parties agree to an extension, and the public hearing shall also include any oral or written comments that an authorized representative of the school district in which the proposed public charter school would be physically located may provide regarding the merits of the petition and any potential impacts on the school district. Following review of the petition and the public hearing, the authorized chartering entity shall either approve or deny the charter within sixty (60) days after the date of the public hearing, provided however, that

the date may be extended by an additional sixty (60) days if the petition fails to contain all of the information required in this section, or if both parties agree to the extension. This public hearing shall be an opportunity for public participation and oral presentation by the public. This hearing is not a contested case hearing as described in chapter 52, title 67, Idaho Code.

(3) An authorized chartering entity may approve a charter under the provisions of this chapter only if it determines that the petition contains the requisite signatures, the information required by subsections (4) and (5) of this section, and additional statements describing all of the following:

(a) The proposed educational program of the public charter school, designed among other things, to identify what it means to be an "educated person" in the twenty-first century, and how learning best occurs. The goals identified in the program shall include how all educational thoroughness standards as defined in section 33-1612, Idaho Code, shall be fulfilled.

(b) The measurable student educational standards identified for use by the public charter school. "Student educational standards" for the purpose of this chapter means the extent to which all students of the public charter school demonstrate they have attained the skills and knowledge specified as goals in the school's educational program.

(c) The method by which student progress in meeting those student educational standards is to be measured.

(d) A provision by which students of the public charter school will be tested with the same standardized tests as other Idaho public school students.

(e) A provision which ensures that the public charter school shall be state accredited as provided by rule of the state board of education.

(f) The governance structure of the public charter school including, but not limited to, the person or entity who shall be legally accountable for the operation of the public charter school, and the process to be followed by the public charter school to ensure parental involvement.

(g) The qualifications to be met by individuals employed by the public charter school. Instructional staff shall be certified teachers as provided by rule of the state board of education.

(h) The procedures that the public charter school will follow to ensure the health and safety of students and staff.

(i) A plan for the requirements of section 33-205, Idaho Code, for the denial of school attendance to any student who is an habitual truant, as defined in section 33-206, Idaho Code, or who is incorrigible, or whose conduct, in the judgment of the board of directors of the public charter school, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public charter school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state.

(j) Admission procedures, including provision for overenrollment. Such admission procedures shall provide that the initial admission procedures for a new public charter school, including provision for overenrollment, will be determined by lottery or other random method, except as otherwise provided herein. If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; and

third, an equitable selection process such as by lottery or other random method. If capacity is insufficient to enroll all pupils for subsequent school terms, who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; and fourth, an equitable selection process such as by lottery or other random method. There shall be no carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies which become available.

(k) The manner in which an annual audit of the financial and programmatic operations of the public charter school is to be conducted.

(l) The disciplinary procedures that the public charter school will utilize, including the procedure by which students may be suspended, expelled and reenrolled, and the procedures required by section 33-210, Idaho Code.

(m) A provision which ensures that all staff members of the public charter school will be covered by the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance, and health insurance.

(n) The public school attendance alternative for students residing within the school district who choose not to attend the public charter school.

(o) A description of the transfer rights of any employee choosing to work in a public charter school that is approved by the board of trustees of a school district, and the rights of such employees to return to any noncharter school in the same school district after employment at such charter school.

(p) A provision which ensures that the staff of the public charter school shall be considered a separate unit for purposes of collective bargaining.

(q) The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act, including disciplinary procedures for these students.

(r) A plan for working with parents who have students who are dually enrolled pursuant to section 33-203, Idaho Code.

(s) The process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school.

(t) A proposal for transportation services as required by section 33-5208(4), Idaho Code.

(u) A plan for termination of the charter by the board of directors, to include:

(i) Identification of who is responsible for dissolution of the charter school;

(ii) A description of how payment to creditors will be handled;

(iii) A procedure for transferring all records of students with notice to parents of how to request a transfer of student records to a specific school; and

(iv) A plan for the disposal of the public charter school's assets.

(4) The petitioner shall provide information regarding the proposed operation and potential effects of the public charter school including, but not limited to, the facilities to be utilized by the public charter school, the manner in which administrative services of the public charter school

are to be provided and the potential civil liability effects upon the public charter school and upon the authorized chartering entity.

(5) At least one (1) person among a group of petitioners of a prospective public charter school shall attend a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held, and shall provide proof of attendance to workshop attendees. Such proof shall be submitted by the petitioners to an authorized chartering entity along with the charter petition.

(56) The public charter school commission may approve a charter for a public virtual school under the provisions of this chapter only if it determines that the petition contains the requirements of subsections (3) and (4) of this section and the additional statements describing the following:

- (a) The learning management system by which courses will be delivered;
- (b) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;
- (c) A plan for the provision of professional development specific to the public virtual school environment;
- (d) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely, frequent feedback about student progress;
- (e) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;
- (f) A plan for the provision of technical support relevant to the delivery of online courses;
- (g) The means by which the public virtual school will provide opportunity for student-to-student interaction; and
- (h) A plan for ensuring equal access to all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.

SECTION 12. That Section 33-5212, Idaho Code, be, and the same is hereby repealed.

SECTION 13. That Section 39-2903, Idaho Code, be, and the same is hereby amended to read as follows:

39-2903. DEFINITIONS. As used in this chapter:

(1) "Full commissioning" means that a third-party commissioning authority has validated and documented that the building and its systems are designed, installed, tested and capable of being operated and maintained to perform in accordance with the design intent, including energy performance. The full commissioning process extends through all phases of the project, from conceptualization to occupancy and operation, with evaluation checks at each phase to ensure validation of the building's performance.

(2) "Idaho state building authority" means the Idaho state building authority as established in chapter 64, title 67, Idaho Code.

(3) "Major facility project" means:

(a) A building project constructed by a state agency or for occupancy or use by a state agency that is larger than five thousand (5,000) gross square feet of occupied or conditioned space as defined in the appropriate building code adopted by the Idaho building code board pursuant to chapter 41, title 39, Idaho Code; or

(b) A building renovation project constructed by a state agency or for occupancy or use by a state agency on an existing building that is larger

than five thousand (5,000) gross square feet of occupied or conditioned space as defined in the appropriate building code adopted by the Idaho building code board pursuant to chapter 41, title 39, Idaho Code, and with a project cost greater than fifty percent (50%) of the assessed value of the existing building.

(4) "Operational cost savings" means that the savings of the operational costs of a major facility project constructed pursuant to section 39-2904(1), Idaho Code, over a period of ten (10) years, will equal or be more than the additional cost of construction of the building as required in section ~~39-3904~~ 39-2904, Idaho Code.

(5) "Permanent building fund advisory council" means the permanent building fund advisory council created in section 67-5710, Idaho Code.

(6) "State agency" means every state officer, department, division, bureau, commission and board, including those in the legislative or judicial branch and public postsecondary educational institutions. With the exception of community college districts, for purposes of this chapter, "state agency" does not include a political subdivision as defined in section 67-2320(5), Idaho Code, or a public charter school as defined in section 33-5202A, Idaho Code.

SECTION 14. That the Heading for Chapter 2, Title 47, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 2

BUREAU OF MINES AND GEOLOGY IDAHO GEOLOGICAL SURVEY

SECTION 15. That Section 47-306, Idaho Code, be, and the same is hereby amended to read as follows:

47-306. RECORDS OF LOGS -- CLASSIFICATION OF ROCKS, FOSSILS, AND MINERALS -- REPORTS TO AUTHORIZED PERSONS. The ~~bureau of mines and geology~~ Idaho geological survey shall preserve orderly records of logs filed with it and shall determine and record and classify rocks shown by samples, identify fossils and minerals, and, on request, shall supply to the properly authorized person, connected with the drilling operations from which logs and samples are received a report of such determinations and identifications.

SECTION 16. That Section 47-307, Idaho Code, be, and the same is hereby amended to read as follows:

47-307. USE OF INFORMATION. The ~~bureau of mines and geology~~ Idaho geological survey is hereby authorized to utilize in its study of regional rock structures, mineral deposits, and underground water resources, the information so derived.

SECTION 17. That Section 49-114, Idaho Code, be, and the same is hereby amended to read as follows:

49-114. DEFINITIONS -- M. (1) "Major component part" means a rear clip, cowl, frame or inner structure forward of the cowl, body, cab, front end assembly, front clip or such other part which is critical to the safety of the vehicle.

(2) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste or material identification code and destination of hazardous material or hazardous waste during any transportation within, through, or to any destination in this state.

(3) "Manufactured home." (See section 39-4105, Idaho Code)

(4) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered at an established place of business in this state. The term, for purposes of

sections 49-1613 through 49-1615, 49-1617, 49-1622 and 49-1623, Idaho Code, shall include a distributor and other factory representatives.

(5) "Manufacturer's year designation" means the model year designated by the vehicle manufacturer, and not the year in which the vehicle is, in fact, manufactured.

(6) "Maximum gross weight" means the scale weight of a vehicle, equipped for operation, to which shall be added the maximum load to be carried as declared by the owner in making application for registration. When a vehicle against which a registration fee is assessed is a combination of vehicles, the term "maximum gross weight" means the combined maximum gross weights of all vehicles in the combination.

(7) "Metal tire." (See "Tires," section 49-121, Idaho Code)

(8) "Mileage" means actual distance that a vehicle has traveled.

(9) "Moped" means a limited-speed motor-driven cycle having:

(a) Both motorized and pedal propulsion that is not capable of propelling the vehicle at a speed in excess of thirty (30) miles per hour on level ground, whether two (2) or three (3) wheels are in contact with the ground during operation. If an internal combustion engine is used, the displacement shall not exceed fifty (50) cubic centimeters and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged; or

(b) Two (2) wheels or three (3) wheels with no pedals, which is powered solely by electrical energy, has an automatic transmission, a motor which produces less than two (2) gross brake horsepower, is capable of propelling the device at a maximum speed of not more than thirty (30) miles per hour on level ground and as originally manufactured, meets federal motor vehicle safety standards for motor-driven cycles. A moped is not required to be titled and no motorcycle endorsement is required for its operator.

(10) "Motorbike" means a vehicle as defined in section 67-7101, Idaho Code. Such vehicle shall be titled and may be approved for motorcycle registration pursuant to ~~under~~ section 49-402, Idaho Code, upon certification by the owner of the installation and use of conversion components that make the motorbike compliant with federal motor vehicle safety standards.

(11) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground that meets the federal motor vehicle safety standards as originally designed, and includes a converted motorbike, but does not include a motor-driven cycle, a motorbike, a tractor or a moped.

(12) "Motor carrier" means an individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire.

(13) "Motor-driven cycle" means a cycle with a motor that produces five (5) brake horsepower or less as originally manufactured that meets federal motor vehicle safety standards as originally designed, and does not include mopeds. Such vehicle shall be titled and a motorcycle endorsement is required for its operation.

(134) "Motor home" means a vehicular unit designed to provide temporary living quarters, built into an integral part or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems which meet the ~~American National Standards Institute (ANSI) A119.7~~ National Fire Protection Association (NFPA) 1192 Standard ~~for~~ on Recreational Vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating and/or air conditioning, a potable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(145) "Motorized wheelchair" means a motor vehicle with a speed not in excess of eight (8) miles per hour, designed for and used by a handicapped person.

(156) "Motor number." (See "Identifying number," section 49-110, Idaho Code)

(167) "Motor vehicle." (See "Vehicle," section 49-123, Idaho Code)

(178) "Motor vehicle liability policy" means an owner's or operator's policy of liability insurance, certified as provided in section 49-1210, Idaho Code, as proof of financial responsibility, and issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(189) "Motor vehicle record" means any record that pertains to a motor vehicle registration, motor vehicle title or identification documents or other similar credentials issued by the department or other state or local agency.

SECTION 18. That Section 49-123, Idaho Code, be, and the same is hereby amended to read as follows:

49-123. DEFINITIONS -- V. (1) "Variable load suspension axle" means an axle or axles designed to support a part of the vehicle and load and which can be regulated to vary the amount of load supported by such an axle or axles and which can be deployed or lifted by the operator of the vehicle. See also section 49-117, Idaho Code.

(a) "Fully raised" means that the variable load suspension axle is in an elevated position preventing the tires on such axle from having any contact with the roadway.

(b) "Fully deployed" means that the variable load suspension axle is supporting a portion of the weight of the loaded vehicle as controlled by the preset pressure regulator valve.

(2) "Vehicle" means:

(a) General. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(b) Authorized emergency vehicle. Vehicles operated by any fire department or law enforcement agency of the state of Idaho or any political subdivision of the state, ambulances, vehicles belonging to personnel of voluntary fire departments while in performance of official duties only, vehicles belonging to, or operated by, EMS personnel certified or otherwise recognized by the EMS bureau of the Idaho department of health and welfare while in the performance of emergency medical services, sheriff's search and rescue vehicles which are under the immediate supervision of the county sheriff, wreckers which are engaged in motor vehicle recovery operations and are blocking part or all of one (1) or more lanes of traffic, other emergency vehicles designated by the director of the Idaho state police or vehicles authorized by the Idaho transportation board and used in the enforcement of laws specified in section 40-510, Idaho Code, pertaining to vehicles of ten thousand (10,000) pounds or greater.

(c) Commercial vehicle or commercial motor vehicle. For the purposes of chapters 3 and 9 of this title, driver's licenses and vehicle equipment, a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

1. Has a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds inclusive of a towed unit with a manufacturer's gross vehicle weight rating (GVWR) of more than ten thousand (10,000) pounds; or

2. Has a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds; or

3. Is designed to transport sixteen (16) or more people, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the hazardous material transportation act and which require the motor vehicle to be placarded under the hazardous materials regulations (49 CFR part 172, subpart F).

For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a vehicle or combination of vehicles of a type used or maintained for the transportation of persons for hire, compensation or profit, or the transportation of property for the owner of the vehicle, or for hire, compensation, or profit, and shall include fixed load specially constructed vehicles exceeding the limits imposed by chapter 10, title 49, Idaho Code, and including drilling rigs, construction, drilling and wrecker cranes, log jammers, log loaders, and similar vehicles which are normally operated in an overweight or oversize condition or both, but shall not include those vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code, or exempted by section 49-426, Idaho Code. A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen (15) persons, including the driver, shall not be a "commercial vehicle" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

(d) Farm vehicle. A vehicle or combination of vehicles owned by a farmer or rancher, which are operated over public highways, and used exclusively to transport unprocessed agricultural, dairy or livestock products raised, owned and grown by the owner of the vehicle to market or place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies or products purchased by that farmer or rancher for his own use, and used in the farming or ranching operation or used by a farmer partly in transporting agricultural products or livestock from the farm of another farmer that were originally grown or raised on the farm, or when used partly in transporting agricultural supplies, equipment, materials or livestock to the farm of another farmer for use or consumption on the farm but not transported for hire, and shall not include vehicles of husbandry or vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code.

(e) Foreign vehicle. Every vehicle of a type required to be registered under the provisions of this title brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(f) Glider kit vehicle. Every large truck manufactured from a kit manufactured by a manufacturer of large trucks which consists of a frame, cab complete with wiring, instruments, fenders and hood and front axles and wheels. The "glider kit" is made into a complete assembly by the addition of the engine, transmission, rear axles, wheels and tires.

(g) Motor vehicle. Every vehicle which is self-propelled, and for the purpose of titling and registration meets federal motor vehicle safety standards as defined in section 49-107, Idaho Code. Motor vehicle does not include vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.

(h) Multipurpose passenger vehicle (MPV). For the purposes of section 49-966, Idaho Code, a motor vehicle designed to carry ten (10) or fewer persons which is constructed either on a truck chassis or with special features for occasional off-road operation.

(i) Neighborhood electric vehicle (NEV). A self-propelled, electrically-powered, four-wheeled motor vehicle which is emission free and conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low-speed vehicles under federal regulations at 49 CFR part 571. An NEV shall be titled, registered and insured according to law as provided respectively in chapters 4, 5 and 12, title 49, Idaho Code, and shall only be operated by a licensed driver. Operation of an NEV on a highway shall be allowed as provided in section 49-663, Idaho Code.

(j) Noncommercial vehicle. For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a noncommercial vehicle shall not include those vehicles required to be registered under sections 49-402 and 49-402A, Idaho Code, and means all other vehicles or combinations of vehicles which are not commercial vehicles or farm vehicles, but shall include motor homes. A noncommercial vehicle shall include those vehicles having a combined gross weight not in excess of sixty thousand (60,000) pounds and not held out for hire, used for purposes related to private use and not used in the furtherance of a business or occupation for compensation or profit or for transporting goods for other than the owner.

(k) Passenger car. For the purposes of section 49-966, Idaho Code, a motor vehicle, except a multipurpose passenger vehicle, motorcycle or trailer, designed to carry ten (10) or fewer persons.

(l) Rebuilt salvage vehicle. Every vehicle that has been rebuilt or repaired using like make and model parts and visually appears as a vehicle that was originally constructed under a distinctive manufacturer. This includes a salvage vehicle which is damaged to the extent that a "rebuilt salvage" brand is required to be added to the title.

(m) Reconstructed vehicles. Vehicles which have been reconstructed by the use of a kit designed to be used to construct an exact replica of a vehicle which was previously constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles. A glider kit vehicle is not a reconstructed vehicle.

(~~mn~~) Replica vehicle. A vehicle made to replicate any passenger car or truck previously manufactured, using metal, fiberglass or other composite materials. Replica vehicles must look like the original vehicle being replicated but may use a more modern drive train. At a minimum, replica vehicles shall meet the same federal motor vehicle safety and emission standards in effect for the year and type of vehicle being replicated.

(~~no~~) Salvage vehicle. Any vehicle for which a salvage certificate, salvage bill of sale or other documentation showing evidence that the vehicle has been declared salvage or which has been damaged to the extent that the owner, or an insurer, or other person acting on behalf of the owner, determines that the cost of parts and labor minus the salvage value makes it uneconomical to repair or rebuild. When an insurance company has paid money or has made other monetary settlement as compensation for a total loss of any vehicle, such vehicle shall be considered to be a salvage vehicle.

(~~op~~) Specially constructed vehicle. Every vehicle of a type required to be registered not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction and cannot be visually identified as a vehicle produced by a particular manufacturer. This includes:

1. A vehicle that has been structurally modified so that it does not have the same appearance as a similar vehicle from the same manufacturer; or

2. A vehicle that has been constructed entirely from homemade parts and materials not obtained from other vehicles; or

3. A vehicle that has been constructed by using major component parts from one (1) or more manufactured vehicles and cannot be identified as a specific make or model; or

4. A vehicle constructed by the use of a custom kit that cannot be visually identified as a specific make or model. All specially constructed vehicles of a type required to be registered shall be certified by the owner to meet all applicable federal motor vehicle safety standards in effect at the time construction is completed, and all requirements of chapter 9, title 49, Idaho Code.

(pg) Total loss vehicle. Every vehicle that is deemed to be uneconomical to repair. A total loss shall occur when an insurance company or any other person pays or makes other monetary settlement to the owner when it is deemed to be uneconomical to repair the damaged vehicle. The compensation for total loss as defined herein shall not include payments by an insurer or other person for medical care, bodily injury, vehicle rental or for anything other than the amount paid for the actual damage to the vehicle.

(3) "Vehicle identification number." (See "Identifying number," section 49-110, Idaho Code)

(4) "Vehicle salesman" means any person who, for a salary, commission or compensation of any kind, is employed either directly or indirectly, or regularly or occasionally by any dealer to sell, purchase or exchange, or to negotiate for the sale, purchase or exchange of vehicles. (See also "full-time salesman," section 49-107, Idaho Code, and "part-time salesman," section 49-117, Idaho Code)

(5) "Vessel." (See section 67-7003, Idaho Code)

(6) "Veteran." (See section 65-502, Idaho Code)

(7) "Violation" means a conviction of a misdemeanor charge involving a moving traffic violation, or an admission or judicial determination of the commission of an infraction involving a moving traffic infraction, except bicycle infractions.

SECTION 19. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck, each neighborhood electric vehicle and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds and that complies with the federal motor vehicle safety standards as defined in section 49-107, Idaho Code, shall be:

Vehicles one (1) and two (2) years old	\$48.00
Vehicles three (3) and four (4) years old	\$36.00
Vehicles five (5) and six (6) years old	\$36.00
Vehicles seven (7) and eight (8) years old	\$24.00
Vehicles over eight (8) years old	\$24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars (\$24.00).

(3) For all motorcycles and motor-driven cycles which comply with the federal motor vehicle safety standards, operated upon the public highways the annual fee shall be nine dollars (\$9.00).

(4) For operation of an all-terrain vehicle, utility type vehicle or motorbike, excluding a motorbike with an engine displacement of fifty (50) cubic centimeters or less, on public lands, a restricted vehicle license plate fee pursuant to section 49-450, Idaho Code, shall be paid. In addition, the registration fee specified in section 67-7122, Idaho Code, shall be paid as provided in section 67-7122, Idaho Code. The registration and restricted vehicle license plate exemption provided in section 49-426(2), Idaho Code, applies to all-terrain vehicles, utility type vehicles, motorbikes and motorcycles used for the purposes described in subsection (2) of section 49-426, Idaho Code.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(8) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars (\$25.00) and an annual program fee of fifteen dollars (\$15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars (\$25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-415C, 49-415D, 49-415E, 49-416A, 49-416B, 49-416C, 49-416D, 49-416E, 49-417, 49-417A, 49-417B, 49-417C, 49-417D, 49-417E, 49-418A, 49-418B, 49-418C, 49-418E, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E and 49-420G, Idaho Code, there shall be an initial program fee of thirty-five dollars (\$35.00) and an annual program fee of twenty-five dollars (\$25.00). The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law.

(89) Any vehicle that does not meet federal motor vehicle safety standards shall not be registered and shall not be permitted to operate on public highways of the state, as defined in section 40-117, Idaho Code, unless otherwise specifically authorized.

SECTION 20. That Section 50-909, Idaho Code, be, and the same is hereby amended to read as follows:

50-909. RETENTION OF CITY RECORDS USING PHOTOGRAPHIC AND DIGITAL MEDIA. (1) A city officer may reproduce and retain documents in a photographic, digital or other nonpaper medium. The medium in which a document is retained shall accurately reproduce the document in paper form during the period for which the document must be retained and shall preclude unauthorized alteration of the document.

(2) If the medium chosen for retention is photographic, all film used must meet the quality standards of the American national standards institute (ANSI).

(3) If the medium chosen for retention is digital, the medium must provide for reproduction on paper at a resolution of at least two hundred (200) dots per inch.

(4) A document retained by the city in any form or medium permitted under this section shall be deemed an original public record for all purposes. A reproduction or copy of such a document, certified by the city clerk, shall be deemed to be a transcript or certified copy of the original and shall be admissible before any court or administrative hearing.

(5) Once a paper document is retained in a nonpaper medium as authorized by this section, the original paper document may be disposed of or returned to the sender, except in the case of "permanent" records, as defined in section 50-907, Idaho Code. Paper originals of permanent records shall be retained by the city in perpetuity, or may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

(6) Whenever any record is reproduced by photographic or digital process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fire-resistant vault, or off-site storage facility, and he shall retain the other copy in his office with suitable equipment for displaying such record at not less than original size and for making copies of the record.

SECTION 21. That Section 54-2702, Idaho Code, be, and the same is hereby amended to read as follows:

54-2702. RECORDS OF PURCHASES OF SCRAP REQUIRED -- CONTENTS. (1) Every scrap dealer shall keep a legible record describing scrap purchased by him from individuals together with the date and place of such purchase. In addition, the scrap dealer shall obtain from such individual from whom such purchase is made, the individual's name and address and shall make a legible record of the same. The records shall include the number of the driver's license of the individual from whom such scrap is purchased together with the license plate number of the vehicle in which he is transporting his scrap, as well as information from any receipts that are applicable. Provided however, for any purchase from an individual that is ten dollars (\$10.00) or less, the scrap dealer shall not be required to include in his records the number of the driver's license of the individual or the individual's license plate number of the vehicle in which such individual is transporting his scrap.

(2) Such record and entries therein shall at all times be open to inspection and shall be produced upon request of the state police, by the sheriff of the county or any of his deputies, by any member of the police force in

a city or town and any constable in the county in which the scrap dealer does business.

(23) Every person who purchases or transports scrap obtained from another in an amount over one hundred (100) pounds shall be required to possess a receipt from the person from whom the scrap is obtained or possess a bill of lading for the scrap. A copy of this receipt or bill of lading shall be held by the transporter or purchaser, who shall make it available for inspection by the state police, the county sheriff or his deputies, or any member of a city police department that has proper jurisdiction.

SECTION 22. That Section 63-201, Idaho Code, be, and the same is hereby amended to read as follows:

63-201. DEFINITIONS. As used for property tax purposes in ~~title 63~~, chapters 1 through 23, title 63, Idaho Code, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Appraisal" means an estimate of property value for property tax purposes.

(a) For the purpose of estimated property value to place the value on any assessment roll, the value estimation must be made by the assessor or a certified property tax appraiser.

(b) For the purpose of estimating property value to present for an appeal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code, the value estimation may be made by the assessor, a certified property tax appraiser, a licensed appraiser, or a certified appraiser or any party as specified by law.

(2) "Bargeline" means those water transportation tugs, boats, barges, lighters and other equipment and property used in conjunction with waterways for bulk transportation of freight or ship assist.

(3) "Cogenerators" means facilities which produce electric energy, and steam or forms of useful energy which are used for industrial, commercial, heating or cooling purposes.

(4) "Collection costs" are amounts authorized by law to be added after the date of delinquency and collected in the same manner as property tax.

(5) "Credit card" means a card or device, whether known as a credit card or by any other name, issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise.

(6) "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.

(7) "Delinquency" means any property tax, special assessment, fee, collection cost, or charge collected in the same manner as property tax, that has not been paid in the manner and within the time limits provided by law.

(8) "Electronic funds transfer" means any transfer of funds that is initiated by electronic means, such as an electronic terminal, telephone, computer, ATM or magnetic tape.

(9) "Fixtures" means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by having been physically incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property, the use or purpose of such articles is integral to the use of the real property to which it is affixed, and a person would reasonably be considered to intend to make the articles permanent additions to the real property. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building. "Fix-

tures" does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles.

(~~7~~10) "Floating home" means a floating structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, has no mode of power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.

(~~8~~11) "Improvements" means all buildings, structures, manufactured homes, as defined in section 39-4105(8), Idaho Code, mobile homes as defined in section 39-4105(9), Idaho Code, and modular buildings, as defined in section 39-4301(7), Idaho Code, erected upon or affixed to land, fences, water ditches constructed for mining, manufacturing or irrigation purposes, fixtures, and floating homes, whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed or attached. The term "improvements" also includes all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

(~~10~~92) "Late charge" means a charge of two percent (2%) of the delinquency.

(~~11~~03) "Lawful money of the United States" means currency and coin of the United States at par value and checks and drafts which are payable in dollars of the United States at par value, payable upon demand or presentment.

(~~12~~4) "Legal tender" means lawful money as defined in subsection (~~11~~3) of this section.

~~13~~(~~14~~15) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

(~~15~~26) "Operating property" means real and personal property operated in connection with any public utility, railroad or private railcar fleet, wholly or partly within this state, and which property is necessary to the maintenance and operation of the public utility, railroad or private railcar fleet, and the roads or lines thereof, and includes all rights-of-way accompanied by title; roadbeds; tracks; pipelines; bargelines; equipment and docks; terminals; rolling stock; equipment; power stations; power sites; lands; reservoirs, generating plants, transmission lines, distribution lines and substations; and all title and interest in such property, as owner, lessee or otherwise. The term includes electrical generation plants under construction, whether or not owned by or operated in connection with any public utility. For the purpose of the appraisal, assessment and taxation of operating property, pursuant to chapter 4, title 63, Idaho Code, the value of intangible personal property shall be excluded from the taxable value of operating property in accordance with the provisions of section 63-602L, Idaho Code, and the value of personal property, other than intangible personal property, shall be excluded from the taxable value of operating property in accordance with the provisions of section 63-602KK, Idaho Code.

(~~16~~37) "Party in interest" means a person who holds a properly recorded mortgage, deed of trust or security interest.

(~~17~~48) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho.

(~~18~~59) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property."

(~~19~~620) "Private railcar fleet" means railroad cars or locomotives owned by, leased to, occupied by or franchised to any person other than a railroad company operating a line of railroad in Idaho or any company classified as a railroad by the interstate commerce commission and entitled to possess such railroad cars and locomotives except those possessed

solely for the purpose of repair, rehabilitation or remanufacturing of such locomotives or railroad cars.

(2071) "Public utility" means electrical companies, pipeline companies, natural gas distribution companies, or power producers included within federal law, bargelines, and water companies which are under the jurisdiction of the Idaho public utilities commission. The term also includes telephone corporations, as that term is defined in section 62-603, Idaho Code, except as hereinafter provided, whether or not such telephone corporation has been issued a certificate of convenience and necessity by the Idaho public utilities commission.

This term does not include cogenerators, mobile telephone service or companies, nor does it include pager service or companies, except when such services are an integral part of services provided by a certificated utility company nor does the term "public utility" include companies or persons engaged in the business of providing solely on a resale basis, any telephone or telecommunication service which is purchased from a telephone corporation or company.

(2182) "Railroad" means every kind of railway, whether its line of rails or tracks be at, above or below the surface of the earth, and without regard to the kind of power used in moving its rolling stock, and shall be considered to include every kind of street railway, suburban railway or interurban railway excepting facilities established solely for maintenance and rebuilding of railroad cars or locomotives.

(2293) "Real property" means land and all rights and privileges thereto belonging or any way appertaining, all quarries and fossils in and under the land, and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, improvements and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in chapter 17, title 63, Idaho Code, and. Timber, forest, forest land, and forest products shall be defined as provided in chapter 17, title 63, Idaho Code.

(2304) "Record owner" means the person or persons in whose name or names the property stands upon the records of the county recorder's office. Where the record owners are husband and wife at the time of notice of pending issue of tax deed, notice to one (1) shall be deemed and imputed as notice to the other spouse.

(2415) "Special assessment" means a charge imposed upon property for a specific purpose, collected and enforced in the same manner as property taxes.

(2526) "System value" means the market value for assessment purposes of the operating property when considered as a unit.

(2637) "Tax code area" means a geographical area made up of one (1) or more taxing districts with one (1) total levy within the geographic area, except as otherwise provided by law.

(2748) "Taxing district" means any entity or unit with the statutory authority to levy a property tax.

(2859) "Taxable value" means market value for assessment purposes, less applicable exemptions or other statutory provisions.

(29630) "Transient personal property" is personal property, specifically such construction, logging or mining machinery and equipment which is kept, moved, transported, shipped, hauled into or remaining for periods of not less than thirty (30) days, in more than one (1) county in the state during the same year.

(3071) "Warrant of distraint" means a warrant ordering the seizure of personal property to enforce payment of property tax, special assessment, expense, fee, collection cost or charge collected in the same manner as personal property tax.

SECTION 23. That Section 63-510, Idaho Code, be, and the same is hereby amended to read as follows:

63-510. NOTIFICATION OF VALUATION DUE TO STATE TAX COMMISSION. (1) Prior to the first Monday of August the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the property roll for the current year and shall provide an estimate of the net taxable value for each taxing unit or district from the current year's estimated subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year to any taxing unit or district.

(2) Prior to the first Monday of March the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year, and listed on the subsequent or missed property roll, to any taxing unit or district.

(3) The notification required in subsections (1) and (2) of this section shall be on forms prescribed and provided by the state tax commission and shall list separately the value exempt from property taxation in accordance with section 63-602G, Idaho Code, and the value in excess of the equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, pursuant to chapters 20 and 29, title 50, Idaho Code.

(4) For the purposes of this section, "taxing district," as defined in section 63-201(2748), Idaho Code, shall include each incorporated city in each county, regardless of whether said city certifies a property tax budget.

SECTION 24. That Section 63-1703, Idaho Code, be, and the same is hereby amended to read as follows:

63-1703. CERTAIN FOREST LANDS TO BE DESIGNATED FOR TAXATION BY OWNER -- LIMITATIONS. For the purposes of appraisal, assessment and taxation under the provisions of this chapter, all forest lands in parcels of five (5) or more acres but less than five thousand (5,000), whether contiguous or not, as long as such parcels are held in common ownership, must be designated by the forest landowner to be subject to the provisions of either subsection (a) or (b) of this section. A forest landowner cannot have parcels designated under the provisions of both subsections (a) and (b) of this section at one (1) time. If the forest landowner fails to make a designation, his forest lands shall be subject to appraisal, assessment and taxation under the provisions of section 63-1702, Idaho Code. Once a designation is made by the forest landowner, such designation must remain in effect until the designation period expires, unless the forest lands are transferred to another owner using a different taxing category; in such case, the taxing category of the transferred forest lands shall be the same as that maintained by the new owner.

A forest landowner may change the designation of all forest lands in common ownership at the end of any designation period, subject to the recapture of any deferred taxes due as a result of such change. After January 1 and by December 31 of the tenth year of each designation period the forest landowner must notify the county assessor of any change in forest land designation. Failure to notify the county assessor will result in the continuation of the landowner's present designation until the end of the next designation period.

Any substantial change in the use of forest lands not conforming with the definition of forest land in section 63-1701, Idaho Code, during such

ten (10) year period under the designations made in subsection (a) or (b) of this section shall be reported by the landowner to the county assessor within thirty (30) days of the change in use. Upon notification of the change in use, the assessor shall appraise, assess and tax those acres as provided by applicable laws and rules. Failure to notify the assessor of the change in use when forest lands have been designated as subject to the provisions of subsection (a) or (b) of this section shall cause forfeiture of such designation, and cause that property to be appraised, assessed and taxed as provided in section 63-1702, Idaho Code.

Forest lands designated for assessment pursuant to the provisions of section 63-1706, Idaho Code, shall be subject to the recapture of deferred taxes upon removal of such designation, a substantial change in use, or ownership transfer, except that there shall be no recapture initiated upon ownership transfer of forest lands designated as subject to the provisions of section 63-1706, Idaho Code, to a landowner with forest lands already designated as subject to the provisions of section 63-1706, Idaho Code, prior to the transfer, or who so designates his lands to be subject to the provisions of section 63-1706, Idaho Code. In the event payment is offered or made, it shall be accepted by the county treasurer and applied in the manner of payment of other property tax.

The dollar amount of deferred taxes subject to recapture shall be determined by the county assessor by applying current tax levies against the current values that would have been in effect if the lands were subject to appraisal and assessment during the current year under the provisions of section 63-1705, Idaho Code, if there has been a change in ownership or a removal of designation, or section 63-1702, Idaho Code, if there has been a change in use with no change in ownership, which amount shall be multiplied by the number of years that the lands have been subject to the designation under section 63-1706, Idaho Code. The amount of the deferred tax shall accrue through designation periods, up to a maximum of ten (10) years, and shall apply to the most recent ten (10) years in which the parcel has been designated under the provisions of section 63-1706, Idaho Code. A credit shall be allowed for taxes actually paid under the provisions of section 63-1706, Idaho Code, for an identical ten (10) year period, up to the total amount of the deferred taxes. All deferred amounts shall be a lien against the land. Deferred tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Deferred tax amounts shall be supplied by the county assessor to the county treasurer by May 15 of the year following conveyance or within thirty (30) days of removal of designation, or of learning of a change in use. All deferred tax amounts shall be due and payable to the county treasurer on demand and shall become delinquent if not paid by the demand due date specified by the county treasurer on the forms prescribed by the state tax commission. If the deferred tax is not paid as provided above, the payment becomes delinquent and subject to late charges, and interest in the amounts provided in sections 63-201 (1092) and 63-1001, Idaho Code, and subject to collection in the manner as set forth in chapter 10, title 63, Idaho Code. Estimated deferred tax amounts may be held by the county treasurer in a tax anticipation account from the date of conveyance until June 1 of the year following conveyance.

The county treasurer shall cause the deferred taxes and any penalty and interest paid pursuant to the provisions of this section to be apportioned to the various taxing authorities within which the property subject to the tax is located in the same manner as property taxes.

(a) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1705, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1705, Idaho Code, shall become effective the first day of January following the year of designation.

(b) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1706, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1706, Idaho Code, shall become effective the first day of January following the year of designation.

(c) All forest products or timber harvested from investment lands not designated as subject to the provisions of section 63-1702, 63-1705 or 63-1706, Idaho Code, and delivered to a point of utilization as logs or semiprocessed forest products, except those forest products harvested for the domestic use of the landowner under the provisions of section 63-1708, Idaho Code, shall be subject to the yield tax at the time of harvest in the same manner provided for in section 63-1706, Idaho Code.

Approved February 26, 2009.

CHAPTER 12
(S.B. No. 1067)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE BOARD OF NURSING WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 359, Laws of 2008, there is hereby appropriated to the Board of Nursing within the Department of Self-Governing Agencies the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Operating Expenditures	\$28,000
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FROM:

State Regulatory Fund	\$28,000
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SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 26, 2009.

CHAPTER 13
(S.B. No. 1068)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE OUTFITTERS AND GUIDES BOARD WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 3, Chapter 359, Laws of 2008, there is hereby appropriated to the Outfitters and Guides Board within the Department of Self-Governing Agencies the following amount

to be expended according to the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:	
Operating Expenditures	\$30,000
FROM:	
State Regulatory Fund	\$30,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 26, 2009.

CHAPTER 14
(S.B. No. 1069)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 288, Laws of 2008, there is hereby appropriated to the Department of Labor the following amount to be expended for Employment Services according to the designated expense class from the listed funds for the period July 1, 2008, through June 30, 2009:

FOR:	
Operating Expenditures	\$151,100
FROM:	
Federal Grant Fund	\$ 17,800
Rural Broadband Development Matching Fund	<u>133,300</u>
TOTAL	\$151,100

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 26, 2009.

CHAPTER 15
(H.B. No. 22)

AN ACT
RELATING TO STATE VETERANS HOMES; AMENDING SECTION 56-1004, IDAHO CODE, TO REMOVE ADMINISTRATORS IN CHARGE OF STATE VETERANS HOMES FROM DEPARTMENT OF HEALTH AND WELFARE DIRECTOR POWERS AND DUTIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 56-1004, Idaho Code, be, and the same is hereby amended to read as follows:

56-1004. DIRECTOR -- ADDITIONAL POWERS AND DUTIES. (1) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a) Prescribe such rules as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state;

(b) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law;

(c) Administer oaths for all purposes required in the discharge of his duties;

(d) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided however, that the administrators in charge of any division of the department, and the administrators in charge of the ~~state veterans homes~~, state hospital north, state hospital south, and Idaho state school and hospital shall serve at the pleasure of the director;

(e) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department.

(2) The department is empowered to acquire, by purchase, lease or exchange, any property which in the judgment of the department is needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale, lease or exchange, any property which in the judgment of the department is not needful for the operation of the same.

Approved February 26, 2009.

CHAPTER 16
(H.B. No. 66)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 287, Laws of 2008, there is hereby appropriated to the Industrial Commission the following amount to be expended according to the designated expense class from the listed funds for the period July 1, 2008, through June 30, 2009:

CRIME VICTIMS COMPENSATION:

FOR:

Trustee and Benefit Payments	\$500,000
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FROM:

Crime Victims Compensation Fund	\$450,000
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Federal Grant Fund	<u>50,000</u>
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TOTAL	\$500,000
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SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 26, 2009.

CHAPTER 17
(H.B. No. 67)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 265, Laws of 2008, there is hereby appropriated to the Department of Agriculture the following amount to be expended for the designated program according to the designated expense classes from the listed fund for the period July 1, 2008, through June 30, 2009:

AGRICULTURAL INSPECTIONS:

FOR:

Personnel Costs	\$ 68,000
Operating Expenditures	<u>40,000</u>
TOTAL	\$108,000

FROM:

Agricultural Fees - Organic Food Products Fund	\$108,000
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SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 26, 2009.

CHAPTER 18
(H.B. No. 80)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE CHILD WELFARE PROGRAM FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE FOSTER AND ASSISTANCE PAYMENTS PROGRAM FOR FISCAL YEAR 2009; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE FOSTER AND ASSISTANCE PAYMENTS PROGRAM FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE COMMUNITY DEVELOPMENTAL DISABILITY SERVICES PROGRAM FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE MEDICAL ASSISTANCE SERVICES DIVISION FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE COMMUNITY HOSPITALIZATION PROGRAM FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE PHYSICAL HEALTH SERVICES PROGRAM FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE EMERGENCY MEDICAL SERVICES PROGRAM FOR FISCAL YEAR 2009; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE EMERGENCY MEDICAL SERVICES PROGRAM FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 357, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Child Welfare Program the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Operating Expenditures	\$20,000
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FROM:

Cooperative Welfare Fund (Dedicated)	\$20,000
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SECTION 2. In addition to the appropriation made in Section 3, Chapter 357, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Foster and Assistance Payments Program the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Trustee and Benefit Payments	\$275,100
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FROM:

Cooperative Welfare Fund (Dedicated)	\$275,100
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SECTION 3. Notwithstanding any other provision of law, the appropriation to the Department of Health and Welfare for the Foster and Assistance Payments Program is hereby reduced by the following amount according to the designated expense class from the listed funds for the period July 1, 2008, through June 30, 2009:

FOR:

Trustee and Benefit Payments	\$250,100
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FROM:

General Fund	\$ 75,000
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Cooperative Welfare Fund (Federal)	<u>175,100</u>
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TOTAL	\$250,100
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SECTION 4. In addition to the appropriation made in Section 1, Chapter 354, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Community Developmental Disability Services Program the following amount according to the designated expense classes from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Personnel Costs	\$ 63,600
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Trustee and Benefit Payments	<u>500,000</u>
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TOTAL	\$563,600
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FROM:

Cooperative Welfare Fund (Dedicated)	\$563,600
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SECTION 5. In addition to the appropriation made in Section 1, Chapter 268, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Medical Assistance Services Division the following

amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2008, through June 30, 2009:

FOR:

Operating Expenditures	\$ 2,600,000
Trustee and Benefit Payments	<u>34,200,000</u>
TOTAL	\$36,800,000

FROM:

Hospital Assessment Fund	\$10,200,500
Cooperative Welfare Fund (Dedicated)	2,600,000
Cooperative Welfare Fund (Federal)	<u>23,999,500</u>
TOTAL	\$36,800,000

SECTION 6. In addition to the appropriation made in Section 1, Chapter 269, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Community Hospitalization Program the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Trustee and Benefit Payments	\$2,400,000
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FROM:

Cooperative Welfare Fund (Dedicated)	\$2,400,000
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SECTION 7. In addition to the appropriation made in Section 1, Chapter 358, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Physical Health Services Program the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2008, through June 30, 2009:

FOR:

Operating Expenditures	\$ 750,700
Trustee and Benefit Payments	<u>2,404,500</u>
TOTAL	\$3,155,200

FROM:

Cooperative Welfare Fund (Dedicated)	\$1,053,000
Cooperative Welfare Fund (Federal)	<u>2,102,200</u>
TOTAL	\$3,155,200

SECTION 8. In addition to the appropriation made in Section 3, Chapter 358, Laws of 2008, there is hereby appropriated to the Department of Health and Welfare for the Emergency Medical Services Program the following amount to be expended according to the designated expense classes from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Personnel Costs	\$120,000
Operating Expenditures	<u>175,000</u>
TOTAL	\$295,000

FROM:

Emergency Medical Services Fund I & II	\$295,000
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SECTION 9. Notwithstanding any other provision of law, the appropriation to the Department of Health and Welfare for the Emergency Medical Services Program is hereby reduced by the following amount for the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

FOR:

Personnel Costs \$120,000

FROM:

Cooperative Welfare Fund (Federal) \$120,000

SECTION 10. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 26, 2009.

CHAPTER 19
(H.B. No. 20)

AN ACT

RELATING TO THE ENDOWMENT FUND INVESTMENT BOARD; AMENDING SECTION 57-719, IDAHO CODE, TO REVISE A PROVISION RELATED TO THE COMPENSATION OF BOARD MEMBERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 57-719, Idaho Code, be, and the same is hereby amended to read as follows:

57-719. BOARD -- APPOINTMENT OF MEMBERS -- TERM -- REMOVAL -- VACANCIES -- ORGANIZATION -- QUORUM -- MEETINGS -- COMPENSATION. The members of the board appointed by the governor shall serve for terms of four (4) years, provided that for the first term the governor shall appoint three (3) members who shall serve for a term of two (2) years, two (2) members who shall serve for a term of three (3) years, and two (2) members who shall serve for a term of four (4) years. Members of the board shall serve until their successors have been selected and qualified.

A member of the board appointed by the governor shall not hold an office, position, or employment in a political party, with the exception of those members from the house of representatives and the senate. An appointed member may be removed from the board for cause by a two-thirds (2/3) vote of the full board.

A vacancy in the appointive membership of the board during a term thereof shall be filled by appointment by the governor for the unexpired term.

There shall be a chairman of the board elected by a majority of the members of the board. A majority of the members of the board shall constitute a quorum for the transaction of business.

The meetings of the board shall be held at least quarterly and at other times upon the call of the chairman or a majority of the board. The board members appointed hereunder shall be compensated as provided by section 59-509(h), Idaho Code, ~~for attending meetings of the board.~~

Approved February 26, 2009.

CHAPTER 20
(H.B. No. 1)

AN ACT

RELATING TO ENGINEERS AND SURVEYORS; AMENDING SECTION 54-1213, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN FEES; AND AMENDING SECTION 54-1214, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1213, Idaho Code, be, and the same is hereby amended to read as follows:

54-1213. APPLICATIONS AND FEES. Applications for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's education and a detailed summary of his engineering or land surveying experience. An applicant for licensure as a professional engineer or professional land surveyor shall furnish not less than five (5) references, of whom three (3) or more should be professional engineers or professional land surveyors, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. An applicant for certification as an engineer intern or land surveyor intern shall furnish not less than three (3) references of whom at least one (1) should be a professional engineer or professional land surveyor, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. Applications for certificates of authorization shall be made in accordance with section 54-1235, Idaho Code.

The maximum application fee for professional engineers or professional land surveyors seeking to be licensed by an eight (8) hour or longer examination shall ~~be an amount equal to the amount charged the board by the entity preparing and administering the examination, plus an administrative fee not to exceed one hundred dollars (\$100).~~ The ~~total~~ application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for an applicant who seeks a certificate as an engineer intern or land surveyor intern shall ~~be an amount equal to the amount charged the board by the entity preparing and administering the examination, plus an administrative fee not to exceed fifty dollars (\$50.00).~~ The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for business entities seeking a certificate of authorization shall be two hundred dollars (\$200). The application fee shall accompany the application.

The amount of the license fee or certificate fee shall be fixed by the board prior to June 30th of any year and shall continue in force until changed.

Should the board deny the issuance of a certificate or license to any applicant, the application fee paid shall be retained as a processing fee.

SECTION 2. That Section 54-1214, Idaho Code, be, and the same is hereby amended to read as follows:

54-1214. EXAMINATIONS. (1) Examinations will be held at such times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations will be given in two (2) sections and may be taken only after the applicant has met the other minimum requirements as given in section 54-1212, Idaho Code, and has been approved by the board for admission to the examinations as follows:

(a) Fundamentals of Engineering -- The examination consists of an eight (8) hour test on the fundamentals of engineering. Passing this examination qualifies the examinee for an engineer intern certificate, provided he has met all other requirements of certification required by this chapter.

(b) Principles and Practice of Engineering -- The examination consists of a minimum of an eight (8) hour test on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer, provided he has met the other requirements for licensure required by this chapter.

(c) Fundamentals of Surveying -- The examination consists of an eight (8) hour test on the fundamentals of surveying. Passing this examination qualifies the examinee for a land surveyor intern certificate, provided he has met all other requirements for certification required by this chapter.

(d) Principles and Practice of Surveying -- The examination consists of a minimum of an eight (8) hour test on applied surveying. Passing this examination qualifies the examinee for licensure as a professional land surveyor, provided he has met the other requirements for licensure required by this chapter.

(3) A candidate failing all or part of an examination for the first time may apply for reexamination, which may be granted upon payment of an application fee equal to the ~~total~~ application fee for the required examination plus a separate examination fee paid by the applicant directly to the entity designated by the board. In the event of a second failure, the examinee shall be required to obtain a minimum of one (1) additional year of experience, acceptable to the board, from the date of the second examination failure, and submit evidence of having completed an additional eight (8) semester credits of college level academic education relating to the examination, before the board will consider that he has acquired the necessary additional knowledge to warrant assignment to a third examination. The separate application and examination fees shall be as set forth herein. In the event of a third or subsequent failure, the examinee shall be required to obtain a minimum of three (3) additional years of experience, acceptable to the board, from the date of the third or subsequent examination failure, and submit evidence of having completed an additional twelve (12) semester credits of college level academic education relating to the examination, before the board will consider that he has acquired the necessary additional knowledge to warrant assignment to a subsequent examination. The separate application and examination fees shall be as set forth herein.

(4) The board may prepare and adopt specifications for the written examinations in engineering and land surveying.

Approved March 3, 2009.

CHAPTER 21
(H.B. No. 9)

AN ACT

RELATING TO MOTOR FUELS TAX AND TRANSFER FEE ON BIODIESEL; AMENDING SECTION 41-4903, IDAHO CODE, TO REVISE THE DEFINITION OF LICENSED DISTRIBUTOR; AMENDING SECTION 63-2421, IDAHO CODE, TO CLARIFY THAT A PERSON ACTING AS A DISTRIBUTOR WHO ONLY PRODUCES FIVE THOUSAND GALLONS OR LESS OF

BIODIESEL IN A CALENDAR YEAR IS SUBJECT TO THE MOTOR FUEL USE TAX ON CONSUMERS; AND AMENDING SECTION 63-2427A, IDAHO CODE, TO EXCLUDE FROM THE REQUIREMENT TO OBTAIN A MOTOR FUEL DISTRIBUTOR'S LICENSE A PERSON ACTING AS A DISTRIBUTOR WHO ONLY PRODUCES FIVE THOUSAND GALLONS OR LESS OF BIODIESEL IN A CALENDAR YEAR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-4903, Idaho Code, be, and the same is hereby amended to read as follows:

41-4903. DEFINITIONS. For the purposes of this chapter:

(1) "Aboveground storage tank" means any one (1) or a combination of tanks, including pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of pipes connected thereto, is less than ten percent (10%) beneath the surface of the ground. This term does not include a heating tank, farm tank or residential tank or any tank with a capacity of one hundred ten (110) gallons or less.

(2) "Accidental release" means any sudden or nonsudden release of petroleum from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(3) "Administrator" means the state insurance fund or any person employed by the board of trustees to replace the state insurance fund, employed by the board to administer the Idaho petroleum clean water trust fund.

(4) "Application fee" means the amount paid or payable by an owner or operator applying for a contract of insurance with the trust fund to offset the costs of issuing contracts of insurance and other costs of administering this fund.

(5) "Board" means the board of trustees appointed by the governor.

(6) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence defined in subsection (19) of this section.

(7) "Contamination" means the presence of petroleum or petroleum products in surface or subsurface soil, surface water, or ground water.

(8) "Commission" means the state tax commission of the state of Idaho.

(9) "Corrective action" means those actions as are reasonably necessary to satisfy applicable federal and state standards in the event of a release into the environment from a petroleum storage tank. Corrective action includes initial corrective action response or actions consistent with a remedial action to clean up contaminated soil and ground water or address residual effects after initial corrective action is taken, as well as actions necessary to monitor, assess and evaluate a release. Corrective action also includes the cost of removing a tank which is releasing or has been releasing petroleum products and the release cannot be corrected without removing the tank; but corrective action does not include the cost of replacing this tank with another tank.

(10) "Department" means the department of insurance of the state of Idaho.

(11) "Director" means the director of the department of insurance.

(12) "Farm tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(13) "Free product" means petroleum or petroleum products in the non-aqueous phase, (e.g., liquid not dissolved in water).

(14) "Fund" or "trust fund" means the Idaho petroleum clean water trust fund.

(15) "Heating tank" means any tank with a capacity of more than one hundred ten (110) gallons situated above ground or underground which is used for storing heating oil for consumptive use on the premises where stored.

(16) "Legal defense costs" means any expense that an owner or operator or the trust fund incurs in defending against claims or actions brought by the federal environmental protection agency or a state agency to require corrective action or to recover the costs of corrective action; or by or on behalf of a third party for bodily injury or property damage caused by a release.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code. If a person subject to the fee imposed by section 41-4909(7), Idaho Code, is not required to obtain a distributor's license under ~~the provisions of chapter 24, title 63, Idaho Code~~ paragraph (a) or (b) of subsection (1) of section 63-2427A, Idaho Code, such person shall apply to the commission for a limited license for the purpose of complying with the requirements of this chapter. Such a limited license shall not be valid for any other purpose. No bond shall be required for a limited license. A holder of a limited license is a "licensed distributor" for the purposes of filing reports, paying fees and other actions necessary to the proper administration and enforcement of this chapter.

(18) "Noncommercial purposes" means not for resale, with respect to motor fuels.

(19) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which resulted in a release into the environment of petroleum products from a petroleum storage tank.

(20) "Operator" means any person in control, or having responsibility for, the daily operations of a petroleum storage tank.

(21) "Owner" means the owner of a petroleum storage tank, except that "owner" does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect the owner's security interest in the tank.

(22) "Person" means any corporation, association, partnership, one (1) or more individuals, or any governmental unit, or agency thereof, other than federal or state agencies.

(23) "Petroleum" and/or "petroleum products" mean crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and aviation fuel. Biodiesel and biodiesel blends as those terms are defined in section 63-2401, Idaho Code, are also petroleum or petroleum products.

(24) "Property damage" means injury or destruction to tangible property caused by an occurrence.

(25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into ground water, surface water, or surface or subsurface soils.

(26) "Residential tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on property used primarily for dwelling purposes.

(27) "Site" means a single parcel of property where petroleum or petroleum products are stored in a petroleum storage tank and includes all con-

tiguous land, structures, other appurtenances, surface water, ground water, surface and subsurface soil, and subsurface strata within and beneath the property boundary.

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

(29) "Tank" means a stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(30) "Trustees" means the trustees of the Idaho petroleum clean water trust fund, who are appointed by the governor pursuant to this chapter.

(31) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used solely for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility including gathering lines regulated under:

(i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or

(ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et seq.); or

(iii) State laws comparable to the provisions of the law referred to in paragraph (d) (i) or (d) (ii) of this subsection as an intrastate pipeline facility;

(e) Surface impoundment, pit, pond or lagoon;

(f) Storm water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(j) Tanks with a capacity of one hundred ten (110) gallons or less.

The term "underground storage tank" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

(32) "Underground storage tank regulations" means regulations for petroleum storage tanks promulgated by the United States environmental protection agency (EPA) pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act, regulations promulgated by the state of Idaho as part of a state program for underground storage tank regulation under subtitle I, or other regulations affecting underground storage tank operations and management, including the international fire code adopted by the state of Idaho.

SECTION 2. That Section 63-2421, Idaho Code, be, and the same is hereby amended to read as follows:

63-2421. USE TAX -- RETURNS AND PAYMENT OF USE TAX BY CONSUMERS. (1) For the privilege of using the highways of this state, any person, including a person described in paragraph (c) of subsection (1) of section 63-2427A, Idaho Code, who consumes motor fuels in a motor vehicle licensed or required to be licensed by the laws of this state, or which is required to be licensed

under the laws of another jurisdiction and is operated on the highways of this state upon which the tax imposed by section 63-2402, Idaho Code, has not been paid or is subject to credit or refund under IFTA and which fuel is not exempted from tax by this chapter, shall be liable for the tax.

(2) Except for motor vehicles licensed under IFTA or operating with a temporary permit under section 49-432, Idaho Code, a person liable under subsection (1) of this section shall report the amount of tax liability and pay the taxes due in conjunction with his income or franchise tax return due under the provisions of chapter 30, title 63, Idaho Code, in the manner and form prescribed by the commission. Payment of motor fuels taxes shall be made in conjunction with any other taxes due on that return and motor fuels taxes due may be offset against refunds of any other taxes shown on the return to be due the taxpayer.

(3) In the case of a person liable under subsection (1) of this section other than one who consumes motor fuels in a motor vehicle described in the exception in subsection (2) of this section and not required to file a return under chapter 30, title 63, Idaho Code, the tax shall be paid annually, on a calendar year basis, in the manner and form required by the commission. The return and payment for each calendar year shall be due on or before April 15 of the immediately succeeding calendar year.

(4) In the case of a person liable under subsection (1) of this section whose motor vehicles are licensed or required to be licensed under IFTA as provided in sections 63-2438 and 63-2439, Idaho Code, or operating with a temporary permit under section 49-432, Idaho Code, the tax shall be paid in the manner required by those provisions.

SECTION 3. That Section 63-2427A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2427A. DISTRIBUTOR'S LICENSE. (1) It is unlawful for a person to act as a distributor without a license unless the person: ~~only purchases fuel which is either or both-~~

(a) Only purchases motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Only purchases dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor; or

(c) Only produces five thousand (5,000) gallons or less of biodiesel in a calendar year for that person's personal consumption.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

(a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of filing this application, had been revoked for cause within five (5) years from the date of such application; or

(b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or

(c) Is a person who has been convicted, under the laws of the United States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3) (a), (3) (b), (3) (c) or (3) (d) of this section.

(4) The commission shall not issue a distributor's license to any person until that person has submitted to the commission a consent to be sued in Idaho district court for purposes of the state enforcing any provision of this chapter. The consent shall be submitted in such form and include such information as the commission may by rule require.

(5) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(6) No distributor's license shall be transferable.

(7) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions.

Approved March 3, 2009.

CHAPTER 22
(H.B. No. 18)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION AND EMPLOYEE SICK LEAVE; AMENDING CHAPTER 21, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2109B, IDAHO CODE, TO PROVIDE THAT ANY EMPLOYEE OF BOISE STATE UNIVERSITY WITH ACCRUED SICK LEAVE AND WHO IS TRANSFERRED OR OTHERWISE BECOMES AN ELIGIBLE EMPLOYEE OF THE COLLEGE OF WESTERN IDAHO SHALL BE CREDITED WITH SUCH SICK LEAVE; AMENDING CHAPTER 53, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5333A, IDAHO CODE, TO PROVIDE THAT ANY EMPLOYEE OF BOISE STATE UNIVERSITY WITH ACCRUED SICK LEAVE AND WHO IS TRANSFERRED OR OTHERWISE BECOMES AN ELIGIBLE EMPLOYEE OF THE COLLEGE OF WESTERN IDAHO SHALL BE CREDITED WITH SUCH SICK LEAVE; DECLARING AN EMERGENCY AND PROVIDING A SUNSET DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 21, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2109B, Idaho Code, and to read as follows:

33-2109B. SICK LEAVE TRANSFERRED -- BOISE STATE UNIVERSITY -- COLLEGE OF WESTERN IDAHO. Notwithstanding any other provision of law to the contrary, any employee of Boise State University who has accrued sick leave pursuant to section 67-5333, Idaho Code, and who, on or before September 1, 2009, is transferred to or otherwise becomes an eligible employee of the College of Western Idaho shall be credited by the College of Western Idaho with the amount of sick leave accrued and unused at the time of transfer. After such transfer, the use of such sick leave and the accrual of additional sick leave shall be governed by the laws, rules and policies applicable to the College of Western Idaho.

SECTION 2. That Chapter 53, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5333A, Idaho Code, and to read as follows:

67-5333A. SICK LEAVE TRANSFERRED -- BOISE STATE UNIVERSITY -- COLLEGE OF WESTERN IDAHO. Notwithstanding any other provision of law to the contrary, any employee of Boise State University who has accrued sick leave pursuant to section 67-5333, Idaho Code, and who, on or before September 1, 2009, is transferred to or otherwise becomes an eligible employee of the College of Western Idaho shall be credited by the College of Western Idaho with the amount of sick leave accrued and unused at the time of transfer. After such transfer, the use of such sick leave and the accrual of additional sick leave shall be governed by the laws, rules and policies applicable to the College of Western Idaho.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and the provisions of this act shall be null, void and of no force and effect on and after September 2, 2009.

Approved March 3, 2009.

CHAPTER 23
(H.B. No. 28)

AN ACT

RELATING TO THE STATE LIQUOR DISPENSARY; AMENDING THE HEADING FOR CHAPTER 2, TITLE 23, IDAHO CODE, TO REVISE TERMINOLOGY; AND AMENDING SECTIONS 23-102, 23-201, 23-202, 23-203, 23-204, 23-205, 23-206, 23-207, 23-208, 23-209, 23-211, 23-212, 23-214, 23-215, 23-216, 23-217, 23-301, 23-302, 23-305, 23-306, 23-307, 23-308, 23-308B AND 23-309, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 23-311, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 23-312, 23-313, 23-402, 23-403, 23-404, 23-406, 23-407, 23-408, 23-409, 23-502, 23-506, 23-507, 23-508, 23-510, 23-512, 23-513, 23-514, 23-515, 23-517, 23-518, 23-519, 23-601, 23-607, 23-608, 23-610, 23-805, 23-914, 23-1303, 23-1305 AND 23-1311, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 33-2105, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTIONS 57-1113, 63-3622M, 63-3638A AND 67-802, IDAHO CODE, TO REVISE TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 2, Title 23, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 2
STATE LIQUOR ~~DISPENSARY~~ DIVISION

SECTION 2. That Section 23-102, Idaho Code, be, and the same is hereby amended to read as follows:

23-102. PURPOSE OF ACT. This act is passed in the exercise of the police power of the state. It is not designed to abridge the personal privilege of a responsible adult to consume alcoholic liquor as a beverage, except in cases of the abuse of that privilege to the detriment of others. The public interest requires that traffic in alcoholic liquor be regulated and controlled by the state, through the medium of a state liquor ~~dispensary~~ di-

vision vested with exclusive authority to import and sell such liquor, with certain exceptions, which are subject to its regulation.

SECTION 3. That Section 23-201, Idaho Code, be, and the same is hereby amended to read as follows:

23-201. ~~SUPERINTENDENT~~ DIRECTOR -- APPOINTMENT AND TERM. There shall be a state liquor dispensary division (in this act referred to as the "~~dispensary division~~"), in the office of the governor. The dispensary division shall be a division of the office of the governor for the purposes of chapter 24, title 67, Idaho Code, and the administrator of the division shall be known as the ~~superintendent~~ director of the state liquor dispensary division. The dispensary division shall be conducted by the ~~superintendent~~ director of the ~~state liquor dispensary division~~. The ~~superintendent~~ director shall be appointed by the governor for a term of three (3) years, but may be removed by the governor at will.

SECTION 4. That Section 23-202, Idaho Code, be, and the same is hereby amended to read as follows:

23-202. PRINCIPAL PLACE OF BUSINESS. The principal place of business of the dispensary division shall be in Ada county.

SECTION 5. That Section 23-203, Idaho Code, be, and the same is hereby amended to read as follows:

23-203. POWERS AND DUTIES. The dispensary division shall have the following general powers and duties:

(a) Regulation of Liquor Traffic. To permit, license, inspect, and regulate the manufacture, importation, transportation, storage, sale, and delivery of alcoholic liquor for purposes permitted by this act.

(b) Traffic in Liquor. To buy, import, transport, store, sell, and deliver alcoholic liquor.

(c) Operation of Liquor Stores. To establish, maintain, and discontinue warehouses, state liquor stores and distribution stations, and in the operation thereof to buy, import, transport, store, sell and deliver such other nonalcohol merchandise as may be reasonably related to its sale of alcoholic liquor.

(d) Acquisition of Real Estate. To acquire, buy, and lease real estate, and to improve and equip the same for the conduct of its business.

(e) Acquisition of Personal Property. To acquire, buy, and lease personal property necessary and convenient for the conduct of its business.

(f) Making Reports. To report to the governor annually, and at such other times as he may require, concerning the condition, management, and financial transactions of the dispensary division.

(g) General Powers. To do all things necessary and incidental to its powers and duties under this act.

The dispensary division shall so exercise its powers as to curtail the intemperate use of alcoholic beverages. It shall not attempt to stimulate the normal demands of temperate consumers thereof, irrespective of the effect on the revenue derived by the state from the resale of intoxicating liquor.

SECTION 6. That Section 23-204, Idaho Code, be, and the same is hereby amended to read as follows:

23-204. SUCCESSOR TO PROPERTY OF FORMER ADMINISTRATORS. The ~~dispensary division~~ shall succeed to the property and records of the Idaho Liquor Control Commission created by chapter 103 of the 1935 Session Laws, and the

Idaho Liquor Board created by Senate Bill No. 26 of the Twenty-fifth Session, approved January 26, 1939.

SECTION 7. That Section 23-205, Idaho Code, be, and the same is hereby amended to read as follows:

23-205. SECRETARY -- APPOINTMENT, TERM AND DUTIES. The ~~superintendent director~~ of the ~~Idaho liquor dispensary division~~ shall appoint a secretary, to serve at the pleasure of the ~~superintendent director~~. The secretary shall keep the records of the ~~dispensary division~~, and perform such other duties as the ~~superintendent director~~ may prescribe.

SECTION 8. That Section 23-206, Idaho Code, be, and the same is hereby amended to read as follows:

23-206. POWERS AND DUTIES OF ~~SUPERINTENDENT DIRECTOR~~ AS SUCCESSOR TO IDAHO LIQUOR BOARD. The ~~superintendent director~~ of the ~~dispensary division~~ shall have the following general powers and duties. (a) Supervision: To exercise general supervision of the conduct and business of the ~~dispensary division~~. (b) Rules and Regulations: To promulgate rules and regulations in the exercise of the governmental and proprietary powers and duties of the ~~dispensary division~~.

SECTION 9. That Section 23-207, Idaho Code, be, and the same is hereby amended to read as follows:

23-207. SPECIFIC RULES AND REGULATIONS. Without attempting or intending to limit the general powers of the ~~superintendent director~~ of the ~~dispensary division~~ contained in section 23-206, Idaho Code, such powers shall extend to and include the following:

(a) To prescribe the duties of the secretary, and to supervise his conduct while in the discharge of his duties.

(b) Subject to the provisions of chapter 53, title 67, Idaho Code, to prescribe the qualifications of and to select clerks, accountants, agents, vendors, inspectors, servants, legal counsel, and other personnel to conduct its business and perform its functions; to require that those holding positions of trust be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code; to fix the compensation of all appointees and employees, assign their duties, and to discharge them.

(c) To regulate the management, operation, bookkeeping, reporting, equipment, records, and merchandise of state liquor stores and distribution stations and warehouses.

(d) To regulate the importation, purchase, transportation, and storage of alcoholic liquor and the furnishing of alcoholic liquor to state liquor stores, distribution stations, and warehouses established under this act.

(e) To determine the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses and for sale at state liquor stores and distribution stations.

(f) To determine the nature, form, and capacity of packages containing liquor kept or sold.

(g) To prescribe the kinds and character of official seals or labels to be attached to packages of liquor sold.

(h) From time to time to fix the sale prices, which shall be uniform throughout the state, of the different classes, varieties, or brands of alcoholic liquor, and to issue and distribute price lists thereof.

(i) To prescribe, prepare, and furnish printed forms and information blanks necessary or convenient for administering this act, and printed copies of the regulations made thereunder. To contract for the printing thereof and of all necessary records and reports.

(j) To regulate the issuance, suspension and revocation of permits and licenses to purchase, manufacture and handle or traffic in alcoholic liquor.

(k) To prescribe the conditions and qualifications necessary for obtaining permits and licenses, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of use of permittees and licensees.

(l) To prescribe the kind, quality, and character of alcoholic liquors which may be purchased or sold under any and all licenses and permits, including the quantity which may be purchased or sold at any one (1) time or within any specified period of time.

SECTION 10. That Section 23-208, Idaho Code, be, and the same is hereby amended to read as follows:

23-208. ~~SUPERINTENDENT~~ DIRECTOR -- POWERS AND DUTIES. The ~~superintendent~~ director as the executive officer of the dispensary division, shall exercise all the powers and duties vested in the dispensary division.

SECTION 11. That Section 23-209, Idaho Code, be, and the same is hereby amended to read as follows:

23-209. OFFICIAL BOND OF ~~SUPERINTENDENT~~ DIRECTOR. The ~~superintendent~~ director shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code.

SECTION 12. That Section 23-211, Idaho Code, be, and the same is hereby amended to read as follows:

23-211. PERSONNEL NOT TO BE INTERESTED IN PRIVATE LIQUOR TRAFFIC. Neither the ~~superintendent~~ director, the secretary, nor any other officer or employee of the dispensary division shall, directly or indirectly, individually, or as a member of a partnership or as a shareholder in a corporation, have any private interest whatsoever in the business of manufacturing, transporting, distributing, or selling of alcoholic liquor; nor shall he receive any kind of profit whatsoever, or have any interest whatsoever in the purchases or sale by the persons herein authorized to purchase and sell alcoholic liquor, except that such provisions shall not prevent any such person from purchasing and keeping in his possession for the personal use of himself, his family, or his guests, of any liquor which may be lawfully purchased.

SECTION 13. That Section 23-212, Idaho Code, be, and the same is hereby amended to read as follows:

23-212. PERSONNEL DISQUALIFIED FROM OTHER OFFICE OR BUSINESS. No officer or employee of the dispensary division shall, while holding such office or position, hold any other office or position or engage in any occupation or business inconsistent or interfering with the duties of such employment.

SECTION 14. That Section 23-214, Idaho Code, be, and the same is hereby amended to read as follows:

23-214. OFFICERS AND EMPLOYEES NOT PERSONALLY LIABLE. Neither the ~~superintendent~~ director, secretary, nor any of the officers or employees of the dispensary division shall be liable for damages sustained by any person because of any act done in the performance of their respective duties under this act.

SECTION 15. That Section 23-215, Idaho Code, be, and the same is hereby amended to read as follows:

23-215. PRICE LISTS TO BE FURNISHED BY SELLERS. All sellers of liquors or wines to the ~~state liquor dispensary division~~ shall furnish to the ~~superintendent~~ director or other executive officer of said ~~dispensary division~~, upon demand of such officer, a sworn statement showing the prices at which the same kind and grade of liquors or wines are currently sold to the official buying agencies of all states whose border touches the border of the state of Idaho; and it shall be the duty of the ~~superintendent~~ director or other executive officer of said ~~dispensary division~~, to keep such listed prices on file in his office and to permit the examination of the same at all times during regular office hours by any person desiring to inspect the same.

SECTION 16. That Section 23-216, Idaho Code, be, and the same is hereby amended to read as follows:

23-216. ATTORNEY OR AGENT OF SELLER -- NAME AND ADDRESS TO BE FURNISHED. Any firm or person interested in the sale of liquors or wines to the ~~state liquor dispensary division~~ shall file with said ~~dispensary division~~ the name and address of any attorney or agent employed by such firm or person in the state of Idaho, and designating the services to be performed by such attorney or agent, which information shall be filed in the office of the ~~state liquor dispensary division~~ and shall be available at all times during regular office hours to any person desiring to inspect the same.

SECTION 17. That Section 23-217, Idaho Code, be, and the same is hereby amended to read as follows:

23-217. SURCHARGE ADDED TO PRICE OF ALCOHOLIC LIQUOR AND ALL OTHER MERCHANDISE SOLD -- COLLECTION AND REMISSION BY ~~SUPERINTENDENT~~ DIRECTOR. (1) The ~~superintendent~~ director of the ~~state liquor dispensary division~~ is hereby authorized and directed to include in the price of alcoholic liquor and all other merchandise sold in the ~~dispensary division~~, and its branches, a surcharge equal to two percent (2%) of the current price per unit computed to the nearest multiple of five cents (5¢).

(2) After the price of the surcharge has been included, the ~~superintendent~~ director of the ~~state liquor dispensary division~~ is hereby authorized and directed to allow a discount of five percent (5%) from the price of each order of alcoholic liquor and all other merchandise sold to any licensee, as defined in section 23-902 (7), Idaho Code.

(3) The surcharge imposed pursuant to this section shall be collected and credited monthly to the drug court, mental health court and family court services fund, as set forth in section 1-1625, Idaho Code.

SECTION 18. That Section 23-301, Idaho Code, be, and the same is hereby amended to read as follows:

23-301. LIQUOR STORES -- NOTICE OF INTENT TO LOCATE. (a) The ~~dispensary division~~ may establish and maintain liquor stores under the management of a vendor in any city organized under general or special law. Before any store site or distributing station may be established within a city or unincorporated area that does not have a distributing station, the ~~dispensary division~~ shall have printed in the city's official newspaper, as defined in section 50-213, Idaho Code, a legal notice of the ~~dispensary's division's~~ intent to establish a liquor store or distributing station in the city and that a public hearing will be held regarding the proposed liquor store if the requirements specified herein are satisfied. The legal notice shall contain the time, date and place of the hearing and the address where the liquor

store or distributing station is proposed to be located, notice of the right to protest the location, the requirements necessary to be satisfied before a public hearing will be held, and shall be a twenty (20) days' notice as described in section 60-109, Idaho Code. If the lesser of twenty-five (25) people or ten percent (10%) of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding of the proposed site, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the ~~superintendent~~ director or his designated representative, a public hearing shall be held within one (1) week after the last legal notice has been published.

(b) If fifty percent (50%) or more of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding the proposed site of the liquor store or distributing station, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the ~~superintendent~~ director or his designated representative within five (5) business days after the public hearing, the ~~dispensary~~ division shall not place a liquor store or distributing station at the proposed site.

(c) The ~~dispensary~~ division may classify liquor stores according to the volume of their sales.

SECTION 19. That Section 23-302, Idaho Code, be, and the same is hereby amended to read as follows:

23-302. DISTRIBUTING STATIONS -- NOTICE OF INTENT TO LOCATE. (a) The ~~dispensary~~ division may select a special distributor in any municipality where in its judgment a liquor store is not required; or in any unincorporated locality, but only if satisfied of the existence therein of adequate local police protection, upon the furnishing by said distributor of a bond satisfactory to the ~~dispensary~~ division, conditioned for his faithful observance of this act and the rules and regulations of the ~~dispensary~~ division thereunder, and if the provisions of section 23-301, Idaho Code, are complied with.

(b) In maintaining the location of any such store or station, or in discontinuing the same, the ~~dispensary~~ division shall give due consideration to the normal local demand for alcoholic liquor by resident temperate adult consumers and the local community sentiment with respect to the liquor traffic as expressed by ordinance or otherwise.

SECTION 20. That Section 23-305, Idaho Code, be, and the same is hereby amended to read as follows:

23-305. COMPENSATION OF VENDORS AND SPECIAL DISTRIBUTORS. Vendors and special distributors shall receive uniform compensation, which compensation shall be considered a part of the cost of sales, according to classifications, fixed by the ~~dispensary~~ division.

SECTION 21. That Section 23-306, Idaho Code, be, and the same is hereby amended to read as follows:

23-306. GENERAL CONDUCT AND MANAGEMENT. In the conduct and management of liquor stores and distributing stations, vendors and special distributors shall be subject to the provisions of this act and the rules and regulations of the ~~dispensary~~ division.

SECTION 22. That Section 23-307, Idaho Code, be, and the same is hereby amended to read as follows:

23-307. DAYS WHEN SALES ARE PROHIBITED. It shall be unlawful to transact the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station:

- (a) After the closing hours as established by the ~~dispensary~~ division.
- (b) On any Thanksgiving, Christmas or Memorial Day.
- (c) On any Sunday, except as provided by county option pursuant to section 23-308, Idaho Code.
- (d) During such other periods or days as may be designated by the ~~dispensary~~ division.

SECTION 23. That Section 23-308, Idaho Code, be, and the same is hereby amended to read as follows:

23-308. COUNTY OPTION SUNDAY LIQUOR SALES -- RESOLUTION OF COUNTY COMMISSIONERS -- LOCAL OPTION COUNTY ELECTION. (1) The board of county commissioners of each county may, by resolution regularly adopted, allow for the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, and such sales shall be allowed so long as the resolution remains in effect. If such a resolution is adopted by the board, a copy of such resolution shall be delivered to the ~~superintendent~~ director of the ~~state liquor dispensary~~ division and to the director of the Idaho state police.

(2) Within thirty (30) days after the effective date of this act, a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any county may be filed with the clerk of said county requesting an election to be held to determine whether or not the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, shall be allowed.

(3) In the event a petition is presented, the county commissioners of any such county shall, within five (5) days after the presentation of the petition, meet and determine the sufficiency thereof by ascertaining whether such petition is signed by the required number of registered, qualified electors of the county affected.

(4) In the event that a petition does not contain the required number of certified signatures, the commissioners shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within sixty (60) days of the date that the commissioners find the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the commissioners shall declare the petition null and void ab initio in its entirety.

(5) In the event the county commissioners of said county determine that the petition is signed by the required percentage of registered, qualified electors, the commissioners shall forthwith make an order calling an election to be held within the county, subject to the provisions of section 34-106, Idaho Code, in the manner provided by law for holding elections for county officers. All the laws of the state of Idaho relating to the holding of elections of county officers for such county shall apply to the holding of the election provided for in this section. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election.

SECTION 24. That Section 23-308B, Idaho Code, be, and the same is hereby amended to read as follows:

23-308B. EFFECT OF LOCAL OPTION COUNTY ELECTION. Upon a canvass of the votes cast, the clerk of the county shall certify the result thereof to the director of the Idaho state police and to the ~~superintendent~~ director of the ~~state liquor dispensary~~ division. If a majority of the votes cast are "Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes," then all liquor stores and distributing stations in the county shall be allowed to transact the sale or delivery of any alcoholic liquor in, on, or from all such premises in the county on any Sunday which does not fall on Christmas Day.

SECTION 25. That Section 23-309, Idaho Code, be, and the same is hereby amended to read as follows:

23-309. SALES. No vendor of any state liquor store or special distributor shall sell any alcoholic liquor or any other merchandise on behalf of the ~~dispensary~~ division except for cash, check, money order, credit card, electronic funds transfer or debit card. In addition, the ~~dispensary~~ division shall, under such rules as may be adopted by it, authorize the vendor of a state liquor store or special distributor to accept a check, credit cards, electronic funds transfer or debit card from persons licensed for the retail sale of liquor by the drink pursuant to chapter 9, title 23, Idaho Code, as payment for purchases from the ~~dispensary~~ division. Dishonor of any credit device given by such person shall constitute grounds for suspension or revocation of such person's license pursuant to section 23-933, Idaho Code, in addition to any other remedy provided by law.

SECTION 26. That Section 23-311, Idaho Code, be, and the same is hereby amended to read as follows:

23-311. CONTAINERS AND LABELS. No alcoholic liquor shall be sold to any purchaser except in a sealed container with the official seal or label prescribed by the ~~dispensary~~ division and no such container shall be opened upon the premises of any state warehouse, store, or distributing station.

SECTION 27. That Section 23-312, Idaho Code, be, and the same is hereby amended to read as follows:

23-312. PERSONS UNDER TWENTY-ONE AND INTOXICATED PERSONS -- INHIBITED SALES. No officer, agent, or employee of the ~~dispensary~~ division shall sell any alcoholic liquor to a person under the age of twenty-one (21) years or to any person intoxicated or apparently intoxicated.

SECTION 28. That Section 23-313, Idaho Code, be, and the same is hereby amended to read as follows:

23-313. LIQUOR NOT TO BE CONSUMED ON PREMISES. No vendor, officer, clerk, servant, agent, or employee of the ~~dispensary~~ division employed in any state liquor store, state-owned warehouse, or distributing station, shall allow any alcoholic liquor to be consumed on the premises of such state warehouse, store, or distributing station, nor shall any person consume any such liquor on such premises.

SECTION 29. That Section 23-402, Idaho Code, be, and the same is hereby amended to read as follows:

23-402. APPROPRIATION. All moneys appropriated for, accruing to, or received by said fund are hereby appropriated for the purpose of this act for the purchase of alcoholic liquor, and the purchase of other nonalcohol merchandise sold through the ~~dispensary~~ division and payment of expenses of ad-

ministration and operation of the dispensary division, and the same shall be paid out by the state treasurer only upon vouchers prepared and certified to by the dispensary division and approved by the state board of examiners.

SECTION 30. That Section 23-403, Idaho Code, be, and the same is hereby amended to read as follows:

23-403. RESERVE. No distribution of any surplus from the liquor fund shall be made as provided in the following section, unless there shall be moneys in said fund after setting aside and reserving the following:

(a) Funds sufficient to pay all current obligations of the dispensary division.

(b) A cash reserve of fifty thousand dollars (\$50,000) over and above all other assets.

SECTION 31. That Section 23-404, Idaho Code, be, and the same is hereby amended to read as follows:

23-404. DISTRIBUTION OF MONEYS IN LIQUOR ACCOUNT. (1) The moneys received into the liquor account shall be transferred or appropriated as follows:

(a) An amount of money equal to the actual cost of purchase of alcoholic liquor and payment of expenses of administration and operation of the dispensary division, as determined by the ~~superintendent~~ director and certified quarterly to the state controller, shall be transferred back to the dispensary division; provided, that the amount so transferred back for administration and operation of the dispensary division shall not exceed the amount authorized to be expended by regular appropriation authorization.

(b) From fiscal year 2006 through fiscal year 2009, forty percent (40%) of the balance remaining after transferring the amounts authorized by paragraph (a) of this subsection shall be transferred or appropriated pursuant to this paragraph (b). Beginning in fiscal year 2010 the percentage transferred pursuant to this paragraph (b) shall increase to forty-two percent (42%) with an increase of two percent (2%) for each subsequent fiscal year thereafter until fiscal year 2014 when such percentage shall be fifty percent (50%).

(i) For fiscal year 2006 and through fiscal year 2009, one million eight hundred thousand dollars (\$1,800,000) shall be appropriated and paid to the cities and counties as set forth in paragraphs (c) (i) and (c) (ii) of this subsection;

(ii) Two million eighty thousand dollars (\$2,080,000) shall be transferred annually to the substance abuse treatment fund, which is created in section 23-408, Idaho Code;

(iii) Six hundred thousand dollars (\$600,000) shall be transferred annually to the community college account, created in section 33-2139, Idaho Code;

(iv) One million two hundred thousand dollars (\$1,200,000) shall be transferred annually to the public school income fund, as defined in section 33-903, Idaho Code;

(v) Six hundred fifty thousand dollars (\$650,000) shall be transferred annually to the cooperative welfare account in the dedicated fund;

(vi) Six hundred eighty thousand dollars (\$680,000) shall be transferred annually to the drug court, mental health court and family court services fund;

(vii) Four hundred forty thousand dollars (\$440,000) shall be transferred annually to the drug and mental health court supervision fund which is created in section 23-409, Idaho Code; and

(viii) The balance shall be transferred to the general fund.

(c) The remainder of the moneys received in the liquor account shall be appropriated and paid as follows:

(i) Forty percent (40%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several counties. Each county shall be entitled to an amount in the proportion that liquor sales through the dispensary division in that county during the state's previous fiscal year bear to total liquor sales through the dispensary division in the state during the state's previous fiscal year, except that no county shall be entitled to an amount less than that county received in distributions from the liquor account during the state's fiscal year 1981.

(ii) Sixty percent (60%) of the balance remaining after the transfers authorized by paragraphs (a) and (b) of this subsection have been made is hereby appropriated to and shall be paid to the several cities as follows:

1. Ninety percent (90%) of the amount appropriated to the cities shall be distributed to those cities which have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that liquor sales through the dispensary division in that city during the state's previous fiscal year bear to total liquor sales through the dispensary division in the state during the state's previous fiscal year, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981;

2. Ten percent (10%) of the amount appropriated to the cities shall be distributed to those cities which do not have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that that city's population bears to the population of all cities in the state which do not have a liquor store or distribution station located within the corporate limits of the city, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981.

(2) All transfers and distributions shall be made periodically, but not less frequently than quarterly but, the apportionments made to any county or city, which may during the succeeding three (3) year period be found to have been in error either of computation or transmittal, shall be corrected during the fiscal year of discovery by a reduction of apportionments in the case of over-apportionment or by an increase of apportionments in the case of under-apportionment. The decision of the superintendent director on entitlements of counties and cities shall be final, and shall not be subject to judicial review.

SECTION 32. That Section 23-406, Idaho Code, be, and the same is hereby amended to read as follows:

23-406. ADMINISTRATIVE EXPENSE. Claims for salaries, wages, and other compensation, premiums on official bonds, traveling and other expenses of the superintendent director, secretary and other officers and employees, and all other expenditures made by the dispensary division in the exercise of its powers hereunder, shall be paid from the liquor fund as a part of the cost of the administration of this act.

SECTION 33. That Section 23-407, Idaho Code, be, and the same is hereby amended to read as follows:

23-407. DEPOSIT OF REVENUE. It shall be the duty of all special distributors, vendors, officers, agents, and employees to report and pay over to the dispensary division, in such manner and pursuant to such rules as may be adopted by it, all revenues derived from the sale of alcoholic beverages, all revenues derived from the sale of all other merchandise sold on behalf of the dispensary division, excise taxes, licenses, permits, fees, profits on sales, or other revenues resulting from the operation of this act, and the dispensary division shall deposit the same with the state treasurer to the credit of the liquor fund.

SECTION 34. That Section 23-408, Idaho Code, be, and the same is hereby amended to read as follows:

23-408. SUBSTANCE ABUSE TREATMENT FUND. There is hereby created in the state treasury, the substance abuse treatment fund. Moneys remitted to the substance abuse treatment fund by the ~~state liquor dispensary division~~ and from the tax on beer and wine are intended to be utilized for substance abuse treatment services at both the state and local levels. Moneys in the fund may be expended pursuant to appropriation and are intended to assist state government and local units of government in providing affordable, accessible substance abuse treatment services, including crisis intervention and detoxification services, inpatient and outpatient treatment services, and recovery support services for all Idaho residents. The state treasurer is authorized to invest all idle moneys in the fund and the interest earned on such investment shall be returned to the fund.

SECTION 35. That Section 23-409, Idaho Code, be, and the same is hereby amended to read as follows:

23-409. DRUG AND MENTAL HEALTH COURT SUPERVISION FUND. There is hereby created in the state treasury, the drug and mental health court supervision fund. Moneys remitted to the drug and mental health court supervision fund by the ~~state liquor dispensary division~~ are intended to be utilized by the Idaho department of correction for the supervision of offenders sentenced to drug or mental health court. Moneys in the fund may be expended pursuant to appropriation and are intended to assist the courts in managing and monitoring this high-risk and high-need population. The state treasurer is authorized to invest all idle moneys in the fund and the interest earned on such investment shall be returned to the fund.

SECTION 36. That Section 23-502, Idaho Code, be, and the same is hereby amended to read as follows:

23-502. SACRAMENTAL WINE. A minister, priest, rabbi, or religious organization shall have the privilege of purchasing wine for sacramental purposes from the dispensary division or from any other source within or without the state.

SECTION 37. That Section 23-506, Idaho Code, be, and the same is hereby amended to read as follows:

23-506. PERMISSIVE USES SUBJECT TO REGULATION. Any person shall have the privilege of the permissive uses hereinbefore referred to in this article without payment of fee, subject to such reasonable general regulations as the dispensary division may promulgate for the purpose of preventing any abuses of the privileges thereby permitted.

SECTION 38. That Section 23-507, Idaho Code, be, and the same is hereby amended to read as follows:

23-507. MANUFACTURERS' LICENSES. The dispensary division may grant a license to a manufacturer of alcoholic liquor for sale to the dispensary division and to customers outside of the state, subject to such regulations as the dispensary division may adopt. The fee for such permit shall be one hundred dollars (\$100).

SECTION 39. That Section 23-508, Idaho Code, be, and the same is hereby amended to read as follows:

23-508. MANUFACTURER'S BOND. As a condition precedent to the issuance of a manufacturer's license, the applicant shall post a bond, written by a surety company authorized to do business in Idaho, in the penal sum of one thousand dollars (\$1,000), conditioned for the faithful observation of the provisions of this act and the regulations rules of the dispensary division promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund.

SECTION 40. That Section 23-510, Idaho Code, be, and the same is hereby amended to read as follows:

23-510. INSPECTION OF MANUFACTORY. The dispensary division shall have the power at all times to inspect any manufactory for which a license is granted hereunder.

SECTION 41. That Section 23-512, Idaho Code, be, and the same is hereby amended to read as follows:

23-512. SALES FOR MEDICAL OR SCIENTIFIC PURPOSES. Under such rules and regulations as the dispensary division may adopt, it has authority to make sales of alcoholic liquor and ethyl alcohol from the dispensary division only:

(a) To a registered pharmacist operating a drug store, for scientific and mechanical purposes and for compounding and preparing medicines.

(b) To a licensed physician, dentist, or veterinarian or other licensed practitioner entitled to prescribe for healing purposes, for administering medicinally and in compounding prescriptions.

(c) To a person in charge of a regularly conducted hospital or sanitorium for administering to the sick and aged.

(d) To a person in charge of a laboratory for use in scientific pursuits and experiments.

(e) For other purposes, similar to those mentioned in this section and not specifically covered by this act.

SECTION 42. That Section 23-513, Idaho Code, be, and the same is hereby amended to read as follows:

23-513. TERM OF PERMITS OR LICENSES. Every permit or license issued by the dispensary division shall expire on December 31st of the year in which issued.

SECTION 43. That Section 23-514, Idaho Code, be, and the same is hereby amended to read as follows:

23-514. NATURE OF PERMIT. A permit shall be a personal privilege, subject to be denied, revoked, or canceled for its abuse. It shall not constitute property; nor shall it be subject to attachment and execution; nor shall

it be alienable or assignable. Every permit shall be issued in the name of the applicant and no person holding a permit shall allow any other person to use the same. The dispensary division, if not satisfied of the integrity and good faith of an applicant for a permit, may refuse to issue the same, or may refuse to issue a renewal thereof.

SECTION 44. That Section 23-515, Idaho Code, be, and the same is hereby amended to read as follows:

23-515. INSPECTION AND EXAMINATION OF RECORDS OF PERMITS AND SALES. The records of the dispensary division with respect to permits and sales thereunder shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 45. That Section 23-517, Idaho Code, be, and the same is hereby amended to read as follows:

23-517. SUSPENSION AND REVOCATION OF PERMITS. The dispensary division may suspend or revoke a permit, for the abuse of its privileges, after reasonable notice and fair hearing in accordance with reasonable rules of procedure prescribed by it.

In lieu of other remedies in this section authorized, the dispensary division may, as a condition precedent to a continuance of his permit, in any case where the permittee has not theretofore given bond, exact from him a bond, written by a surety company authorized to do business in Idaho, in the penal sum of one thousand dollars (\$1,000), conditioned for the faithful observance of the provisions of this act and the regulations of the dispensary division promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund.

SECTION 46. That Section 23-518, Idaho Code, be, and the same is hereby amended to read as follows:

23-518. SURRENDER OF PERMITS. Whenever a permit shall have been voided, canceled or suspended, the holder thereof shall forthwith deliver the same to the dispensary division. The dispensary division shall notify all vendors and special distributors of voidances, cancellations and suspensions. No permit shall be issued to a person whose permit has been voided or canceled within a period of one (1) year from the date of voidance or cancellation of his former permit.

SECTION 47. That Section 23-519, Idaho Code, be, and the same is hereby amended to read as follows:

23-519. SPECIFIC GROUNDS OF SUSPENSION AND REVOCATION OF PERMITS. Without limiting the powers of the dispensary division in the matter of revocation of permits for other cause of abuse of the privilege, the dispensary division is hereby empowered to revoke or suspend a permit of any permittee upon satisfactory proof of any of the following grounds or causes:

(a) Drunkenness or apparent drunkenness, within or without the state of Idaho.

(b) Desertion or nonsupport of family or dependents.

(c) Dependence upon public assistance or relief in any case where it appears that the purchase or consumption of intoxicating liquor by the permittee tends to deprive his family and dependents of needed subsistence.

SECTION 48. That Section 23-601, Idaho Code, be, and the same is hereby amended to read as follows:

23-601. VIOLATION OF DUTY BY OFFICERS AND EMPLOYEES OF ~~DISPENSARY DIVISION~~. Any officer or employee of the ~~dispensary division~~ who shall knowingly and willfully violate any of the provisions of this act, shall be guilty of a misdemeanor; and, upon conviction, shall be punishable by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

SECTION 49. That Section 23-607, Idaho Code, be, and the same is hereby amended to read as follows:

23-607. ADVERTISING. Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state of Idaho.

(1) No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the ~~dispensary division~~ and then only in strict accordance with such regulations.

(2) This section of the act shall not apply however:

(a) To the ~~state liquor dispensary division~~.

(b) To the correspondence, or telegrams, or general communications of the commission, or its agents, servants, and employees.

(c) To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of such agents, servants, or employees of any telegraph company.

A violation of this section shall constitute a misdemeanor.

SECTION 50. That Section 23-608, Idaho Code, be, and the same is hereby amended to read as follows:

23-608. ADDED PENALTY -- FORFEITURE OF LICENSE OR PERMIT -- TRANSMISSION OF RECORD. Whenever, in any court in this state, a defendant is convicted of a violation of title 23, Idaho Code, or of any law of this state relating to alcohol beverages including distilled spirits, beer or wine, or in any case in which it appears that the crime was committed while the defendant was under the influence of alcohol beverages, it shall be the duty of the court to include in its judgment the forfeiture of any license or permit issued to the defendant by the ~~state liquor dispensary division~~ or the Idaho state police pursuant to title 23, Idaho Code, and the court shall forthwith transmit to the issuing authority a certified copy of its judgment.

SECTION 51. That Section 23-610, Idaho Code, be, and the same is hereby amended to read as follows:

23-610. POSSESSION OF UNSTAMPED LIQUOR ILLEGAL -- EXCEPTIONS. It shall be unlawful for any person to possess more than two (2) quarts of alcoholic liquor that does not have affixed thereto the official seal or label prescribed by the ~~Idaho liquor dispensary division~~, except public carriers transporting alcoholic liquor for the ~~Idaho liquor dispensary division~~.

SECTION 52. That Section 23-805, Idaho Code, be, and the same is hereby amended to read as follows:

23-805. DUTIES OF PROSECUTING ATTORNEYS, SHERIFFS, AND OTHER OFFICERS. It shall be the duty of the ~~superintendent~~ director of the ~~state liquor dispensary division~~ and every prosecuting attorney, sheriff, police or other peace officer to cooperate with the Idaho state police in the

enforcement of such laws, and any such officer refusing to so cooperate or divulge any information he may have in any such prosecution shall be subject to action against him as provided in chapter 41, title 19, Idaho Code. Any such action may be brought in the name of the state of Idaho by any resident of the county, or officer of the state or county. Upon the conviction of a person for a violation of the provisions of the Idaho liquor act, or of the provisions of chapter 9, title 23, Idaho Code, the judge of the court imposing the judgment of conviction shall immediately send to the director of the Idaho state police a statement setting forth the title of the court, the name and residence of the defendants, the nature of the offense and the fine and sentence or judgment imposed.

SECTION 53. That Section 23-914, Idaho Code, be, and the same is hereby amended to read as follows:

23-914. LICENSEE MUST PURCHASE FROM DISPENSARY DIVISION -- PRICE. All liquor sold by any licensee shall be purchased from the ~~Idaho liquor dispensary division~~ through its regular retail stores and distributors at the posted price thereof. The ~~state liquor dispensary division~~ is hereby authorized and directed to make such sales for cash, check or money order to be paid at the time of purchase upon a special permit issued to such licensee in such form as shall be prescribed by the ~~superintendent~~ director of the ~~state liquor dispensary division~~. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the ~~state liquor dispensary division~~.

It shall be unlawful for any licensee to sell, or keep for sale, or have on his premises for any purpose whatsoever, any liquor except that purchased as herein authorized and provided, and any licensee found in possession of, selling or keeping for sale any liquor not purchased as herein authorized shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment. Any license issued to such person shall be immediately and permanently revoked. The amount of liquor to be sold to licensees hereunder in any city or village shall be determined by the ~~superintendent~~ director or other executive officer of the ~~Idaho liquor dispensary division~~, but such sales shall be regulated so as to maintain adequate stocks of merchandise for sale to persons other than said licensees.

The provisions of this section notwithstanding, railroad companies shall have the right to have in their possession liquors other than those purchased from the ~~Idaho liquor dispensary division~~.

SECTION 54. That Section 23-1303, Idaho Code, be, and the same is hereby amended to read as follows:

23-1303. DEFINITIONS. (1) The following terms as used in this chapter are hereby defined as follows:

- (a) "Dessert wine" means only those beverages that are designated or labeled, pursuant to the federal alcohol administration act, as "sherry," "madeira" or "port," which contain more than sixteen percent (16%) alcohol by volume, but do not exceed twenty-one percent (21%) alcohol by volume. Dessert wine as defined herein shall not be deemed to be a spirit based beverage for the purposes of paragraph (g) of this subsection.
- (b) "Director" means the director of the Idaho state police.
- (c) "Distributor" means a person to whom a wine distributor's license has been issued.

(d) "Domestic produced product" means wine at least seventy-five percent (75%) of which by volume is derived from fruit or agricultural products grown in Idaho.

(e) "Importer" means a person to whom a wine importer's license has been issued.

(f) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(g) "Low proof spirit beverages" means any alcoholic beverage containing not more than fourteen percent (14%) alcohol by volume obtained by distillation mixed with drinkable water, fruit juices and/or other ingredients in solution. These products shall be considered and taxed as wine. Spirit based beverages exceeding fourteen percent (14%) alcohol by volume shall be considered as liquor and sold only through the ~~state liquor dispensary~~ division system.

(h) "Person" includes an individual, firm, copartnership, association, corporation, or any group or combination acting as a unit, and includes the plural as well as the singular unless the intent to give a more limited meaning is disclosed by the context in which it is used.

(i) "Retailer" means a person to whom a retail wine license has been issued.

(j) "Retail wine license" means a license issued by the director, authorizing a person to sell table wine and/or dessert wine at retail for consumption off the licensed premises.

(k) "Table wine" shall mean any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(l) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(m) "Vintner" means a person who manufactures, bottles, or sells table wine or dessert wine to importers for resale within this state other than a licensed "winery" as herein defined.

(n) "Wine" includes table wine and dessert wine, unless the context requires otherwise.

(o) "Wine by the drink license" means a license to sell table wine or dessert wine by the individual glass or opened bottle at retail, for consumption on the premises only.

(p) "Wine distributor's license" means a license issued by the director to a person authorizing such person to distribute table wine or dessert wine to retailers within the state of Idaho.

(q) "Wine importer's license" means a license issued by the director to a person authorizing such person to import table wine or dessert wine into the state of Idaho and to sell and distribute such wines to a distributor.

(r) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of table wine or dessert wine for sale. Two (2) or more wineries may use the same premises and the same equipment to manufacture their respective wines, to the extent permitted by federal law.

(s) "Winery license" means a license issued by the director authorizing a person to maintain a winery.

(2) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and accepted meanings.

SECTION 55. That Section 23-1305, Idaho Code, be, and the same is hereby amended to read as follows:

23-1305. RESTRICTIONS -- AUTHORITY OF ~~STATE LIQUOR DISPENSARY DIVISION~~ PRESERVED. (a) Wine, as defined in this act, may be manufactured, imported into this state, possessed, distributed and sold in this state in the manner and under the conditions prescribed in this act and not otherwise.

(b) Nothing contained in this act shall prohibit the ~~state liquor dispensary division~~ from selling wine pursuant to the Idaho liquor act in any outlet of the ~~state liquor dispensary division~~.

SECTION 56. That Section 23-1311, Idaho Code, be, and the same is hereby amended to read as follows:

23-1311. SALES BY DISTRIBUTORS -- RESTRICTIONS. No distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, except to the holder of a valid retail wine license or wine by the drink license, or valid wine distributor's license or to the ~~state liquor dispensary division~~. Provided however, any distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, to a bona fide employee of such distributor. No distributor shall permit, for a consideration, wine to be consumed upon the premises of the distributor.

SECTION 57. That Section 33-2105, Idaho Code, be, and the same is hereby amended to read as follows:

33-2105. ADDITION OF TERRITORY TO ~~JUNIOR COMMUNITY~~ COLLEGE DISTRICTS. Any territory not in an existing ~~junior community~~ college district may become a part of a ~~junior community~~ college district by a vote of the school district electors resident of said territory, voting at an election called and held as herein provided.

A petition signed by not less than one hundred (100) school district electors of the territory proposed to be added to the ~~junior community~~ college district, or twenty per cent percent (20%) of the school district electors within the territory, whichever is the lesser, describing the boundaries of the territory, and a true copy thereof, shall be filed with the board of trustees of the ~~junior community~~ college district. The board shall forward the original of said petition, with its recommendations, to the state board of education, and a copy thereof to the board of county commissioners of the home county of the ~~junior community~~ college district. The state board of education shall consider such petition, as it is required to consider a petition for the formation of a ~~junior community~~ college district. If it approve the petition, notice to that effect shall be given the board of trustees of the ~~junior community~~ college district and to the board of county commissioners of the home county of the ~~junior community~~ college district.

When any such petition has been approved by the state board of education, an election shall be held in the manner of elections for the creation of a ~~junior community~~ college district, except that polling places shall be established only in the territory proposed to be added to the district. The question shall be deemed approved only if a majority of the votes cast in the territory were cast in favor of the proposal, and if this be the case, the territory shall be part of said ~~junior community~~ college district with all the force and effect as though said territory had been originally included in said ~~junior community~~ college district at the time of its original organization.

Notices to and by boards of county commissioners and to the state board of education shall be as provided in section 33-2104, Idaho Code. The state board of education shall notify the state liquor ~~dispensary division~~ that such territory has become a part of the ~~junior community~~ college district.

SECTION 58. That Section 57-1113, Idaho Code, be, and the same is hereby amended to read as follows:

57-1113. REFUND OF TAX. When it is determined that a taxpayer is entitled to a refund of beer tax, cigarette tax or the income tax filing fee, after such or any portion thereof has been credited to the permanent building fund, the tax collector hereby is empowered to authorize and direct refund of said tax, or portion thereof so credited, from said permanent building fund.

When it is determined that a taxpayer is entitled to a refund of liquor funds after the same has been credited to the permanent building fund, the ~~superintendent~~ director of the ~~Idaho state dispensary liquor division~~ hereby is empowered to authorize and direct refund of said tax, or portion thereof so credited, from said permanent building fund.

SECTION 59. That Section 63-3622M, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622M. LIQUOR SALES. There are exempted from the taxes imposed by this chapter sales of liquor by the state liquor ~~dispensary~~ division to a person licensed under the provisions of chapter 9, title 23, Idaho Code, for resale as liquor by-the-drink.

SECTION 60. That Section 63-3638A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3638A. SALES TAX ON LIQUOR TO BE PAID TO LIQUOR ACCOUNT. Notwithstanding the provisions of section 63-3638, Idaho Code, the sales tax collected on the retail sale of liquor and all other merchandise by or on behalf of the ~~superintendent~~ director of the state liquor ~~dispensary~~ division shall be credited directly to the liquor account, and shall not be or become a part of the sales tax account.

SECTION 61. That Section 67-802, Idaho Code, be, and the same is hereby amended to read as follows:

67-802. OFFICE OF GOVERNOR -- DUTIES OF GOVERNOR. The office of the governor shall be composed of: the state liquor ~~dispensary~~ division, as provided by chapter 2, title 23, Idaho Code; the military division, as provided by title 46, Idaho Code; the division of financial management; and such other divisions and units as are established or assigned by law, or created through administrative action of the governor.

The governor shall appoint an administrator for each division, with the advice and consent of the senate. Administrators shall serve at the pleasure of the governor, and shall be exempt from the provisions of chapter 53, title 67, Idaho Code. Other subordinate staff necessary to accomplish a division's mission shall be subject to the provisions of chapter 53, title 67, Idaho Code.

The supreme executive power of the state is vested by section 5, article IV, of the constitution of the state of Idaho, in the governor, who is expressly charged with the duty of seeing that the laws are faithfully executed. In order that he may exercise a portion of the authority so vested, the governor is authorized and empowered to implement and exercise those powers and perform those duties by issuing executive orders from time to time which shall have the force and effect of law when issued in accordance with this section and within the limits imposed by the constitution and laws of this state. Such executive orders, when issued, shall be serially numbered for each calendar year and may be referred to and cited by such numerical designation and title. Each executive order issued hereunder shall be effective only after signature by the governor, attestation by and

filing with the secretary of state, who shall keep a permanent register and file of such orders in the same manner as applies to acts of the legislature. In addition, each executive order required by chapter 52, title 67, Idaho Code, to be published in the administrative bulletin shall be filed with the administrative rules coordinator and published in the bulletin. Each such executive order issued by the governor must prescribe a date after which it shall cease to be effective, which shall be within four (4) calendar years of the effective date of such order, and if no date after which such order shall cease to be effective is contained in the order, then such order shall cease to be effective four (4) calendar years from the issuance thereof, unless renewed by subsequent executive order. The governor may modify or repeal any executive order by issuance of a new executive order. The procedures expressly set forth in this section shall be sufficient to make an executive order effective.

In addition to those powers prescribed above, and those prescribed by the constitution, the governor has the powers, and may perform the duties prescribed in this section and the following sections:

1. To supervise the official conduct of all executive and ministerial officers.
2. To see that all offices are filled, and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session.
3. To make the appointments and supply the vacancies provided by law.
4. He is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States.
5. Whenever any suit or legal proceeding is pending in this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state.
6. He may require the attorney general or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.
7. He may require the attorney general to aid any prosecuting attorney in the discharge of his duties.
8. He may offer rewards not exceeding one thousand dollars (\$1,000) each, payable out of the state treasury, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed, or is charged with the commission of, an offense punishable with death; and also offer like rewards, not exceeding five hundred dollars (\$500) each, in cases of felony, where the offense is not punishable with death.
9. To perform such duties respecting fugitives from justice as are prescribed by the penal code.
10. To issue and transmit election proclamations as prescribed by law.
11. He may require any officer to make special reports to him in writing on demand.
12. He has such other powers and may perform such other duties as are devolved upon him by any law of this state.

Approved March 3, 2009.

CHAPTER 24
(H.B. No. 85)

AN ACT

TRANSFERRING MONEYS FROM THE IDAHO MILLENNIUM FUND TO THE IDAHO MILLENNIUM INCOME FUND FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. Notwithstanding the provisions of Section 67-1801, Idaho Code, there is hereby appropriated, and the State Controller is directed to transfer, the sum of three hundred thirty-one thousand eight hundred dollars (\$331,800) from the Idaho Millennium Fund to the Idaho Millennium Income Fund for the purpose of covering program expenditures for fiscal year 2009, as approved by the Legislature.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 3, 2009.

CHAPTER 25
(H.B. No. 86)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2009; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 222, Laws of 2008, there is hereby appropriated to the Department of Correction the following amounts to be expended for the designated programs according to the designated expense class from the listed funds for the period July 1, 2008, through June 30, 2009:

I. MANAGEMENT SERVICES:

FOR:

Operating Expenditures	\$220,000
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FROM:

General Fund	\$220,000
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II. IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:

FOR:

Operating Expenditures	\$42,400
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FROM:

Miscellaneous Revenue Fund	\$42,400
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SECTION 2. Notwithstanding any other provision of law to the contrary, the appropriation made in Section 1, Chapter 222, Laws of 2008, is hereby reduced by the following amount for the designated program, according to the designated expense class from the listed fund for the period July 1, 2008, through June 30, 2009:

I. COUNTY & OUT-OF-STATE PLACEMENT:

FOR:

Operating Expenditures	\$4,000,000
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FROM:

General Fund	\$4,000,000
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SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 3, 2009.

CHAPTER 26
(S.B. No. 1012)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION AND PROPRIETARY SCHOOLS; AMENDING THE HEADING FOR CHAPTER 24, TITLE 33, IDAHO CODE, TO INCLUDE POST-SECONDARY SCHOOLS; AMENDING SECTION 33-2401, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 33-2402, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REVISE PROVISIONS RELATING TO CERTAIN ANNUAL REGISTRATION FEES; AMENDING SECTION 33-2403, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PROVISIONS RELATING TO EXEMPTIONS AND TO REVISE PROVISIONS RELATING TO CERTAIN ANNUAL REGISTRATION FEES; AMENDING SECTION 33-2404, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PROVISIONS RELATING TO ISSUANCE OF CERTAIN CERTIFICATES, TO REVISE PROVISIONS RELATING TO REISSUE OF CERTAIN CERTIFICATES, TO PROVIDE FOR INFORMATION ON CERTIFICATES OF IDENTIFICATION, TO PROVIDE FOR CRIMINAL HISTORY CHECKS PRIOR TO ISSUANCE OF CERTIFICATES OF IDENTIFICATION, TO REVISE PROVISIONS RELATING TO VALIDITY OF CERTIFICATES OF IDENTIFICATION, TO PROVIDE THAT CERTAIN AGENTS CARRY CERTIFICATES OF CERTIFICATION FOR IDENTIFICATION PURPOSES IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT PROPRIETARY SCHOOLS MAINTAIN CERTAIN RECORDS, TO PROVIDE THAT PROPRIETARY SCHOOLS PROVIDE CERTAIN CRIMINAL HISTORY CHECK INFORMATION FOR CERTAIN AGENTS AS PART OF THE ANNUAL REGISTRATION PROCESS AND TO MAKE CODIFIER'S CORRECTIONS; AMENDING SECTION 33-2405, IDAHO CODE, TO REVISE TERMS OF A PURCHASE STATEMENT; AMENDING SECTION 33-2406, IDAHO CODE, TO PROVIDE THAT PROPRIETARY SCHOOLS OBTAIN A SURETY BOND AS A CONDITION OF REGISTRATION, TO REVISE PROVISIONS RELATING TO THE INDEMNIFICATION OF CERTAIN STUDENTS, TO REVISE TERMS OF SUCH BOND AND TO REVISE PROVISIONS RELATING TO A DEMAND UPON THE SURETY SUBMITTED BY THE BOARD OR ITS DESIGNEE; REPEALING SECTION 33-2407, IDAHO CODE, RELATING TO THE STUDENT TUITION RECOVERY ACCOUNT; AND REPEALING SECTION 33-2408, IDAHO CODE, RELATING TO ASSESSMENT OF THE STUDENT TUITION RECOVERY ACCOUNT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 24, Title 33, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 24
POSTSECONDARY AND PROPRIETARY SCHOOLS

SECTION 2. That Section 33-2401, Idaho Code, be, and the same is hereby amended to read as follows:

33-2401. DEFINITIONS. For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) "Accredited" means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board.

(2) "Agent" means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school.

(3) ~~"Agent's permit" means a nontransferable written document issued to an agent by the board~~ certificate of identification" means a nontransferable written document issued to an agent by the proprietary school that the agent represents.

(4) "Board" means the state board of education.

(5) "Course" means instruction imparted in a series of lessons or class meetings to meet an educational objective.

(6) "Course or courses of study" means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise.

(7) ~~"Degree" means any written or any academic, vocational, professional technical or honorary title or designation, mark, appellation, series of letters, numbers or words such as, but not limited to, "bachelor's," "master's," "doctorate," or "fellow," which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, professional technical, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition and an associate of arts or associate of science degree awarded by a community college or other public or private postsecondary educational institution or other entity which may be used for any purpose whatsoever~~ title which contains, in any language, the word "associate," "bachelor," "baccalaureate," "master" or "doctor," or any abbreviation thereof, and which indicates or represents, or which is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training.

(8) "Postsecondary educational institution" means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho, and which provides a course or courses or programs of study that lead to a degree, or which provides, offers or sells degrees.

(9) "Proprietary school" means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees.

SECTION 3. That Section 33-2402, Idaho Code, be, and the same is hereby amended to read as follows:

33-2402. REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS. (1) Unless exempted as provided herein, each postsecondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the board. A public postsecondary educational institution or agency supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register under this section. The board may exempt a nonprofit postsecondary educational institution from the registration requirement in accordance with standards and criteria established in rule by the board. The board may permit a postsecondary educational institution required to register under this section to instead register as a proprietary school under section 33-2403, Idaho Code, in accordance with standards and criteria established in rule by the board.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each degree, course or ~~program~~ courses of study, for academic credit or otherwise, that a postsecondary educational institution intends to conduct, provide, offer or sell. Such rule shall also prescribe the standards and criteria to be utilized by the board for recognition of accreditation organizations.

(3) The board may deny the registration of a postsecondary educational institution that does not meet accreditation requirements or other standards and criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The board shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section ~~based on the respective degrees, courses or programs that each such postsecondary educational institution intends to conduct, provide, offer or sell, not to exceed one hundred dollars (\$100) for each degree, course or program as established in rule by the board.~~ Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the board and shall be dedicated for use by the board in connection with its responsibilities under this chapter.

SECTION 4. That Section 33-2403, Idaho Code, be, and the same is hereby amended to read as follows:

33-2403. REGISTRATION OF PROPRIETARY SCHOOLS. (1) Unless exempted as provided in subsection (4) of this section, each proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the board or its designee.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each course or ~~program~~ courses of study, for academic credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

(3) The board may deny the registration of a proprietary school that does not meet the standards or criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The following individuals or entities are specifically exempt from the registration provisions required by this section:

(a) An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the board.

(b) An individual or entity that offers courses recognized by the board which comply in whole or in part with the compulsory education law.

(c) An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(d) An individual or entity which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code.

~~(e) Aviation school or instructors approved by and under the supervision of the federal aviation administration.~~

~~(f)~~ An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation.

~~(g)~~ An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days.

(hg) A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(ih) An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors.

(5) The board shall assess an annual registration fee on each proprietary school required to be registered under this section as established in rule by the board. ~~Such annual registration fee shall be composed of a fixed portion in an amount not to exceed one hundred dollars (\$100) for each proprietary school, and a variable portion based on the respective course or courses of study that each such proprietary school intends to conduct, provide, offer or sell, not to exceed one hundred dollars (\$100) for each course or courses of study.~~ Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the board or its designee, and shall be dedicated for use by the board in connection with its responsibilities under this chapter.

SECTION 5. That Section 33-2404, Idaho Code, be, and the same is hereby amended to read as follows:

33-2404. AGENT'S PERMIT. (1) No individual may act as an agent of a proprietary school required to be registered under the provisions of this chapter unless that individual holds a valid agent's permit certificate of identification issued by the board ~~and maintains at all times a surety bond as described in section 33-2406, Idaho Code~~ proprietary school that the agent represents.

~~The application for an agent's permit shall be furnished by the board and shall include the following:~~

~~(1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules promulgated pursuant thereto.~~

~~(2) An annual fee for each permit not to exceed fifty dollars (\$50.00). The board shall set by rule the amount of such annual agent's permit fee.~~

~~All agent's permits shall be renewed annually upon reapplication and proper qualifications~~ Each agent's certificate of identification shall be reissued annually by the proprietary school that the agent represents on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate permit certificate of identification is required for each agent.

(3) The agent's permit certificate of identification shall consist of a pocket card and shall bear:

(a) ~~T~~he name and address of the agent;

(b) ~~T~~he name and address of the proprietary school, and that the agent represents;

(c) ~~A~~ statement that the bearer is an authorized agent of the proprietary school, and may solicit and sell courses students for the proprietary school.

(4) The agent shall surrender the agent's permit certificate of identification to the proprietary school upon termination of employment or agency relationship.

(5) An agent representing more than one (1) proprietary school shall obtain a separate agent's permit certificate of identification for each proprietary school represented.

(6) ~~No individual shall be issued an agent's permit~~ For every agent who will have unsupervised contact with minors, prior to issuing the agent a certificate of identification the proprietary school shall complete a criminal history check on the agent for particular criminal offenses, and in accordance with other guidelines, established in rule by the board. No agent shall be issued an agent's certificate of identification if he or she is

found to have been convicted of any of the offenses identified in board rule, or if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

(7) An agent's permit certificate of identification shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended by the board for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, or for the existence of any condition in respect to the agent or the proprietary school he or she represents, which if in existence at the time the agent's permit was issued, would have been grounds for denial for the agent's permit.

(8) The agent shall carry the agent's permit certificate of identification with him or her for identification purposes when engaged in the solicitation for the sale and the selling of courses of study of students away from the premises of the proprietary school, and shall produce the agent's permit certificate of identification for inspection upon request.

~~The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of an agent's permit or proceeding to revoke or suspend an agent's permit of the board conducted pursuant to this section.~~

(9) The issuance of an agent's permit certificate of identification pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any agent's permit certificate of identification to expressly or impliedly represent by any means whatever whatsoever, that the board has made any evaluation, recognition, accreditation or endorsement of any proprietary school or of any course of study being offered for sale by the agent of any such proprietary school. Any oral or written statement, advertisement or solicitation by any proprietary school or agent which refers to the board shall state:

"(Name of school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code."

(10) It shall be unlawful for any agent holding an agent's permit certificate of identification under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the agent's permit certificate of identification constitutes an assurance by the board that any course of study being offered for sale by the agent or proprietary school will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or proprietary school.

(11) No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair.

(12) The board proprietary school shall maintain records for five (5) years of each application for an agent's permit, each bond certificate of identification, and each issuance, denial, termination, suspension and revocation of an agent's permit certificate of identification.

(13) The proprietary school shall provide as part of the annual registration process the names and results of the criminal history check for each agent to whom it has issued a certificate of identification. The criminal history check will be valid for five (5) years.

(14) The board or a student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney's fees and costs both at trial and on appeal.

~~(15) Additionally, a~~Any agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both.

SECTION 6. That Section 33-2405, Idaho Code, be, and the same is hereby amended to read as follows:

33-2405. PURCHASE STATEMENT. At the time of depositing any moneys to purchase the product of any proprietary school, the proprietary school shall require the student to execute the following statement on an appropriate form which shall be maintained on record by the proprietary school in the individual student's file:

"I understand that (Name of proprietary school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code. I also understand that the State Board of Education has not accredited or endorsed any course of study being offered by (Name of proprietary school), and that these courses will may not be accepted for transfer into any Idaho public postsecondary institution."

SECTION 7. That Section 33-2406, Idaho Code, be, and the same is hereby amended to read as follows:

33-2406. SURETY BOND. As a condition of registration, a proprietary school shall obtain a surety bond issued by an insurer duly authorized to do business in this state in favor of the state of Idaho for the indemnification of any student for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the propriety school and a student, or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter shall be required of an agent. The term of the bond shall extend over the period of the permit. The bond shall be supplied by the proprietary school registration, and shall be in such amount as is established in rule by the board.

~~The bond shall provide for liability in the penal sum of one hundred thousand dollars (\$100,000) for a proprietary school with one hundred (100) or more students; fifty thousand dollars (\$50,000) for a proprietary school with fifty (50) to ninety nine (99) students; twenty five thousand dollars (\$25,000) for a proprietary school with less than fifty (50) students. Notwithstanding the above, for a proprietary school that submits evidence acceptable to the board that the total unearned tuition of the proprietary school will not exceed ten thousand dollars (\$10,000) at any given time during the period of registration, a bond in the penal sum of ten thousand dollars (\$10,000) may be provided, regardless of the number of students.~~

The board or its designee may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to ~~fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study~~ a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior writ-

ten notice to the board, ~~and contemporaneously surrendering all agents' permits.~~

~~Each proprietary school shall certify, at the time of registration, the number of students presently enrolled at the proprietary school and shall make available, upon request of the board, proof of enrollment numbers.~~

SECTION 8. That Sections 33-2407 and 33-2408, Idaho Code, be, and the same are hereby repealed.

Approved March 3, 2009.

CHAPTER 27
(S.B. No. 1019)

AN ACT

RELATING TO THE IDAHO EDUCATIONAL TECHNOLOGY INITIATIVE AND THE STATE COUNCIL FOR TECHNOLOGY; REPEALING SECTION 33-4804, IDAHO CODE, RELATING TO THE STATE COUNCIL FOR TECHNOLOGY IN LEARNING; REPEALING SECTION 33-4805, IDAHO CODE, RELATING TO RESPONSIBILITIES OF THE COUNCIL; AMENDING SECTION 33-4806, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR IMPLEMENTATION OF THE PUBLIC SCHOOL TECHNOLOGY GRANT PROGRAM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-4807, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT THE STATE DEPARTMENT OF EDUCATION REPORT TO THE LEGISLATURE AND GOVERNOR; REPEALING SECTION 33-4809, IDAHO CODE, RELATING TO THE HIGHER EDUCATION INFORMATION TECHNOLOGY COMMITTEE; AND REPEALING SECTION 33-4810, IDAHO CODE, RELATING TO THE PUBLIC EDUCATION INFORMATION TECHNOLOGY COMMITTEE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 33-4804 and 33-4805, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 33-4806, Idaho Code, be, and the same is hereby amended to read as follows:

33-48064. PUBLIC SCHOOL TECHNOLOGY GRANTS. There is hereby established the public school technology grant program, to be implemented by the state department of education, which shall make available grants for schools to provide Idaho classrooms, including classrooms at the Idaho school for the deaf and the blind, with the equipment and resources necessary to integrate information age technology with instruction and to further connect those classrooms with external telecommunications services. Grant applications shall include a project plan that describes proposed equipment and software purchases; how the proposed equipment and software will be used effectively in the classroom; provision for training teachers to make optimal use of the technology; and provision for local matching funds as prescribed. ~~by the council; and other elements as prescribed by the council.~~

SECTION 3. That Section 33-4807, Idaho Code, be, and the same is hereby amended to read as follows:

33-48075. EVALUATIONS AND AUDITS. The legislative services office shall, from time to time as directed by the legislature, evaluate and audit the relative impact, costs and benefits of each of the educational technology programs conducted pursuant to this chapter. The state ~~board~~ department of education shall report to the legislature and the governor each year on or before October 1 as to the relative impact, cost and benefit of the educational technology program conducted pursuant to this chapter.

SECTION 4. That Sections 33-4809 and 33-4810, Idaho Code, be, and the same are hereby repealed.

Approved March 3, 2009.

CHAPTER 28
(S.B. No. 1018)

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-123, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION SHALL PREPARE CERTAIN COURSES FOR PRISONERS HELD UNDER THE JURISDICTION OF THE DEPARTMENT OF CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-123, Idaho Code, be, and the same is hereby amended to read as follows:

33-123. EDUCATION FOR INMATES UNDER JURISDICTION OF DEPARTMENT OF CORRECTION. The state board for professional-technical education, in cooperation with the state board of correction, shall have prepared suitable courses of study, including professional-technical training, for prisoners held under the jurisdiction of the department of correction, and the state board of correction shall make arrangements carrying into effect all provisions for the education of prisoners who are under the jurisdiction of the department of correction to the extent possible within the limits of moneys appropriated by the state legislature. Such educational opportunities shall be limited to those inmates who have a need, such need to be determined by the staff of the department of correction, and can benefit from training, and those inmates whose degree of custody classification allows participation in the classroom environment provided.

Approved March 3, 2009.

CHAPTER 29
(S.B. No. 1041)

AN ACT

RELATING TO ACTING GOVERNOR AND LIEUTENANT GOVERNOR COMPENSATION; AMENDING SECTION 67-805, IDAHO CODE, TO PROVIDE THE SALARY TO BE PAID TO THE SENATE PRESIDENT PRO TEMPORE AND THE SPEAKER OF THE HOUSE WHEN SERVING AS ACTING GOVERNOR; AND AMENDING SECTION 67-809, IDAHO CODE, TO PROVIDE THE SALARY TO BE PAID TO THE SENATE PRESIDENT PRO TEMPORE WHEN SERVING AS ACTING LIEUTENANT GOVERNOR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-805, Idaho Code, be, and the same is hereby amended to read as follows:

67-805. ACTING GOVERNOR TO PERFORM SAME DUTIES -- COMPENSATION OF PRESIDENT PRO TEMPORE OF THE SENATE OR SPEAKER OF THE HOUSE OF REPRESENTATIVES WHEN ACTING AS GOVERNOR. (1) Every provision in the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him, extends to the person performing for the time being the duties of acting governor.

(2) Notwithstanding any other provisions of law to the contrary, when performing the duties of acting governor, the president pro tempore of the senate or the speaker of the house of representatives will receive, in addition to his daily legislative compensation, an amount equal to the difference between that daily legislative compensation and the daily salary of the governor.

SECTION 2. That Section 67-809, Idaho Code, be, and the same is hereby amended to read as follows:

67-809. DUTIES OF LIEUTENANT GOVERNOR -- ACTUAL AND NECESSARY EXPENSES -- COMPENSATION OF SENATE PRESIDENT PRO TEMPORE WHEN ACTING AS LIEUTENANT GOVERNOR. (1) The lieutenant governor shall perform on a day to day basis such duties in and for the government of this state as the governor may from time to time direct. The lieutenant governor shall perform such additional duties as the governor may deem necessary and desirable to promote the improvement of state government and the development of the human, natural and industrial resources of this state. At the written direction of the governor, the lieutenant governor may represent the state in negotiations, compacts, hearings and other matters dealing with the states or the federal government. He shall cooperate with all state and local governmental agencies to promote and encourage the orderly development of the resources of Idaho.

The lieutenant governor shall also exercise the powers and privileges of the office of governor and presidency of the senate as provided by sections 12 and 13, article IV of the constitution of the state of Idaho.

(2) The lieutenant governor shall be entitled to receive the following expense allowances:

(a) As unvouchered expense allowances:

(i) While performing the duties of acting governor, the difference between the daily salary of lieutenant governor and the daily salary of governor, which amount shall be in addition to the salary as lieutenant governor. Such amount shall not be paid for any day on which the lieutenant governor claims an unvouchered expense allowance as president of the senate.

(ii) For each day spent serving as president of the senate during a legislative session, the per diem authorized for a member of the legislature by the citizen's committee on legislative compensation.

(iii) Actual mileage expense reimbursement for coming to and returning from any regular, extraordinary or organizational session of the legislature at the same rate as mileage expense reimbursement is made for other state officers and employees.

(iv) For each day actually spent in the office serving as lieutenant governor while the legislature is not in session, the same daily amount of per diem enumerated in subsection (2) (a) (ii) of this section.

(v) For each day actually spent in the office serving as lieutenant governor when the legislature is not in session, the sum of twenty-five dollars (\$25.00) if the lieutenant governor maintains his primary residence in Ada county.

(b) As vouchered expense allowances:

(i) Actual and necessary expenses incurred while serving as president of the senate during a legislative session, subject to the same requirements and limitations as if a member of the legislature.

(ii) Actual and necessary expenses incurred while serving as lieutenant governor or as acting governor.

(3) Unvouchered expense allowances and vouchered expense reimbursement for duties performed as president of the senate shall be paid from the legislative fund. All other compensation and/or allowances for duties performed as the lieutenant governor shall be paid from the appropriation made for the office of the lieutenant governor.

(4) The actual and necessary expenses of the lieutenant governor while performing his official duties as lieutenant governor or as acting governor are hereby expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code (Standard Travel Pay and Allowance Act of 1949).

(5) Notwithstanding any other provisions of law to the contrary, when performing the duties of acting lieutenant governor, the president pro tempore of the senate will receive, in addition to his daily legislative compensation, an amount equal to the difference between that daily legislative compensation and the daily salary of the lieutenant governor.

Approved March 3, 2009.

CHAPTER 30
(S.B. No. 1079)

AN ACT

RELATING TO THE MOTORCYCLE TRAINING PROGRAM; AMENDING SECTION 33-4901, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 33-4902, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION AND TO REPLACE THE SUPERINTENDENT OF PUBLIC INSTRUCTION WITH THE ADMINISTRATOR OF THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 33-4903, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 33-4904, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 33-4905, IDAHO CODE, TO REPLACE THE SUPERINTENDENT OF PUBLIC INSTRUCTION WITH THE ADMINISTRATOR OF THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 33-4906, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 49-304, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AMENDING SECTION 49-313, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION; AND AMENDING SECTION 49-314, IDAHO CODE, TO REPLACE THE DEPARTMENT OF EDUCATION WITH THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-4901, Idaho Code, be, and the same is hereby amended to read as follows:

33-4901. COOPERATION ~~BETWEEN DEPARTMENTS~~. In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the ~~department of education~~ division of professional-technical education in its establishment of a motorcycle rider safety program for the state of Idaho.

SECTION 2. That Section 33-4902, Idaho Code, be, and the same is hereby amended to read as follows:

33-4902. MOTORCYCLE SAFETY PROGRAM. (1) The ~~department of education~~ division of professional-technical education shall develop standards for, establish and administer the Idaho motorcycle safety program.

(2) The ~~department of education~~ division of professional-technical education shall establish standards for the motorcycle rider training course, including standards for course curriculum and student evaluation and testing, and shall meet or exceed established national standards for motorcycle rider training courses in effect as of September 1, 1994.

(3) The program shall include activities to increase motorcyclists' alcohol and drug effects awareness, motorcycle rider improvement efforts, program promotion activities, and other efforts to enhance motorcycle safety through education, including enhancement of public awareness of motorcycles.

(4) The ~~superintendent of public instruction~~ administrator of the division of professional-technical education shall appoint a program coordinator to oversee and direct the program.

(5) The ~~department of education~~ division of professional-technical education shall establish standards for the training and approval of motorcycle rider training instructors and skills examiners which shall meet or exceed established national standards for such instructors and skills examiners in effect as of September 1, 1994.

SECTION 3. That Section 33-4903, Idaho Code, be, and the same is hereby amended to read as follows:

33-4903. IMPLEMENTING AUTHORITY. (1) The ~~department of education~~ state board for professional-technical education shall adopt rules which are necessary to carry out the motorcycle safety program.

(2) The ~~department of education~~ division of professional-technical education may enter into contracts with public or private entities for course delivery and for the provision of services or materials necessary for administration and implementation of the program.

(3) The ~~department of education~~ division of professional-technical education may offer motorcycle rider training courses directly and may approve courses offered by public or private entities as authorized program courses if they are administered and taught in full compliance with standards established for the state program.

(4) The ~~department of education~~ division of professional-technical education may establish reasonable enrollment fees to be charged for persons who participate in a motorcycle rider training course.

(5) The ~~department of education~~ division of professional-technical education may utilize available program funds to defray expenses in offering motorcycle rider training courses and may reimburse entities which offer approved courses for the expenses incurred in offering the courses in order to minimize any course enrollment fee charged to the students.

SECTION 4. That Section 33-4904, Idaho Code, be, and the same is hereby amended to read as follows:

33-4904. MOTORCYCLE SAFETY PROGRAM FUND. (1) The motorcycle safety program fund is established in the state treasury and appropriated on a continual basis to the ~~department of education~~ division of professional-technical education which shall administer the moneys. Money in the fund shall only be used for administration and implementation of the program, including reimbursement of entities which offer approved motorcycle rider training courses.

(2) At the end of each fiscal year, moneys remaining in the motorcycle safety program fund shall be retained in said fund and shall not revert to any other general fund. The interest and income earned on money in the fund,

after deducting any applicable charges, shall be credited to and remain in the motorcycle safety program fund.

(3) Revenue credited to the fund shall include one dollar (\$1.00) of each fee for a class A, B, C or D driver's license as provided in section 49-306, Idaho Code.

(4) Revenue credited to the fund shall include amounts collected for each motorcycle safety program fee imposed pursuant to section 49-453, Idaho Code.

SECTION 5. That Section 33-4905, Idaho Code, be, and the same is hereby amended to read as follows:

33-4905. ADVISORY COMMITTEE. The ~~superintendent of public instruction~~ administrator of the division of professional-technical education shall establish a program advisory committee consisting of five (5) persons representing various interests in motorcycle safety including, but not limited to, motorcycle riding enthusiasts, dealers and law enforcement personnel. Committee members shall advise the program coordinator in developing, establishing and maintaining the program. The committee shall monitor program implementation and report to the ~~superintendent~~ administrator as necessary with recommendations. Members of the committee shall serve without compensation but may be reimbursed for their reasonable expenses while engaged in committee business.

SECTION 6. That Section 33-4906, Idaho Code, be, and the same is hereby amended to read as follows:

33-4906. ANNUAL REPORT ON THE PROGRAM. The ~~department of education~~ division of professional-technical education shall prepare a public report annually. The report shall be completed with the assistance of the program coordinator and the program advisory committee. The report shall include the number and location of various courses offered, the number of instructors approved, the number of students trained in various courses, other information about program implementation as deemed appropriate, and an assessment of the overall impact of the program on motorcycle safety in the state. The report shall also provide a complete accounting of revenue receipts of the motorcycle safety program fund and of all moneys expended under the program.

SECTION 7. That Section 49-304, Idaho Code, be, and the same is hereby amended to read as follows:

49-304. MOTORCYCLE ENDORSEMENT. The department shall issue a motorcycle "M" endorsement on a driver's license to applicants who complete the requirements to operate a motorcycle.

(1) No person may operate a motorcycle upon a highway without a motorcycle "M" endorsement on a valid driver's license.

(2) Any person who applies for a driver's license or renewal of a license may also apply for a motorcycle "M" endorsement. The requirements for obtaining a motorcycle "M" endorsement are:

(a) The applicant shall be tested by written examination for his knowledge of safe motorcycle operating practices and traffic laws specific to the operation of motorcycles upon payment of the fee specified in section 49-306, Idaho Code.

(b) Upon successful completion of the knowledge test and upon payment of the fee required for an "M" endorsement, the applicant shall obtain a motorcycle "M" endorsement on his driver's license.

(3) No person under the age of twenty-one (21) years may apply for or obtain a motorcycle "M" endorsement on his driver's license unless he has suc-

cessfully completed a motorcycle rider training course approved under the provisions of chapter 49, title 33, Idaho Code, in addition to satisfying the requirements specified in subsection (2) of this section. The provisions of this subsection shall not be effective unless and until the motorcycle rider training course is fully implemented by the ~~department of education~~ division of professional-technical education.

(4) Any person who applies for a motorcycle endorsement on a driver's license, in addition to the requirements specified in subsection (2) of this section, may also be required to pass the motorcycle "M" skills test before he can obtain the motorcycle "M" endorsement.

(5) The operation of a motorcycle upon a highway by any person who has failed to obtain a motorcycle "M" endorsement as provided in this section shall constitute an infraction.

SECTION 8. That Section 49-313, Idaho Code, be, and the same is hereby amended to read as follows:

49-313. EXAMINATION OF APPLICANTS. (1) The sheriff, his deputy or authorized agents of the department shall examine every applicant for an instruction permit, restricted school attendance driving permit, seasonal driver's license, or a driver's license or a motorcycle endorsement, except as otherwise provided by law. The examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic. A skills test shall be required for an applicant who has not been previously licensed for the class of license requested, or who holds a license issued by another country unless a reciprocal agreement is in force. However, a skills test may be required for any and all other applicants at the discretion of the examiner or department for a class A, B, C or D driver's license or a motorcycle endorsement. In addition, the applicant's knowledge of traffic laws of this state and when a motorcycle endorsement is applied for, the applicant's knowledge of safe motorcycle operating practices and traffic laws specifically relating to motorcycle operation shall be tested by a written examination, except as provided in section 49-319, Idaho Code. At the discretion of the examiner, the prescribed written examination may be conducted orally.

(2) The knowledge and skills examinations for applicants for driver's licenses in class A, B or C shall be conducted in compliance with 49 CFR part 383.

(3) The skills test for a class A, B, C or D driver's license or for any endorsement shall be given by the department or its authorized agents. The skills examiner for a motorcycle endorsement shall be certified by the ~~department of education~~ division of professional-technical education.

(4) The department shall not issue the following endorsements except as provided:

(a) A tank, double/triple trailer, or hazardous material endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge test.

(b) A passenger endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge and skills test.

(c) A school bus endorsement unless the applicant, in addition to all other applicable qualifications, has passed appropriate knowledge and skills tests. Until September 30, 2005, the department may waive the school bus endorsement skills test requirement if the applicant meets the conditions set forth in accordance with 49 CFR part 383.123.

(5) Any person failing to pass a knowledge or skills test for a class A, B, C or D driver's license, or a knowledge test for a seasonal driver's license, or any endorsement may not retake the test within three (3) business days of the failure.

(6) Any person retaking a knowledge or skills test for a driver's license shall pay the appropriate testing fee as specified in section 49-306, Idaho Code.

(7) The motorcycle skills test for a motorcycle endorsement shall be waived by the department:

(a) On and after September 1, 1998, if the applicant presents satisfactory evidence of successful completion of a recognized motorcycle rider training course approved by the ~~department of education~~ division of professional-technical education;

(b) On and after September 1, 1998, if the applicant presents evidence of a motorcycle endorsement on his current license by a state or province which requires a motorcycle skills test equivalent to that required by Idaho law as determined by the ~~department of education~~ division of professional-technical education;

(c) Until September 1, 1998.

(8) At the discretion of the department, an alternate skills test for the motorcycle endorsement may be administered when the endorsement is for operation of a three-wheeled motorcycle only.

(9) The department or its authorized agents may refuse to give an applicant a skills test if there are reasonable grounds to believe that the safety of the applicant, public, or the examiner would be jeopardized by doing so. Reasonable grounds would include, but not be limited to, the applicant's inability to pass the eye test, written tests, or a statement by a licensed physician stating the applicant is not physically able to drive a motor vehicle.

(10) The department or its authorized agents may deny issuance or renewal of a driver's license or endorsement to any applicant who does not meet the licensing requirements for the class of driver's license or endorsement being renewed or issued.

(11) Skills examinations for seasonal driver's licenses shall be waived.

SECTION 9. That Section 49-314, Idaho Code, be, and the same is hereby amended to read as follows:

49-314. LOCAL EXAMINERS APPOINTED BY DEPARTMENT. (1) The department shall appoint the sheriff in each county and may appoint any deputy sheriff, chief of police, or other officials or private citizens whom the department deems qualified as examiners, who shall be agents of the department and shall perform duties prescribed in this title.

(2) The department shall appoint at least one (1) employee in the department who shall be skilled and highly qualified in the method of giving driver's license examinations, who shall have authority, and it shall be this person's duty to instruct the examiners appointed by the department in the method of giving driver's license examinations and acquaint them with the use of equipment and forms needed in examining applicants for licensure.

(3) Agents of the department appointed to administer skill tests for class A, B or C driver's licenses must be certified according to 49 CFR part 383.

(4) Agents of the department appointed to administer the skills test for a motorcycle endorsement shall be certified by the ~~department of education~~ division of professional-technical education.

(5) Agents of the department to administer skills tests for class D driver's license shall be certified by the department.

Approved March 9, 2009.

CHAPTER 31
(S.B. No. 1052)

AN ACT

RELATING TO DEALERS IN FARM PRODUCE; REPEALING CHAPTER 13, TITLE 22, IDAHO CODE, RELATING TO DEALERS IN FARM PRODUCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 13, Title 22, Idaho Code, be, and the same is hereby repealed.

Approved March 11, 2009.

CHAPTER 32
(H.B. No. 35)

AN ACT

RELATING TO DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-103, IDAHO CODE, TO PROVIDE FOR THE SUPPORT OF A MARKET NEWS SERVICE, TO DELETE REFERENCE TO MAINTENANCE OF A MARKET NEWS SERVICE AND TO PROVIDE CORRECT CODE REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-103, Idaho Code, be, and the same is hereby amended to read as follows:

22-103. DUTIES OF DIRECTOR. The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

(1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist

in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Support a market news service to gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products.

~~(12) Maintain a market news service, including information concerning crops, freight rates, commission rates and such other information as may be of service to producers and consumers, and to act as a clearinghouse for information between producers and consumers.~~

~~(13) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.~~

(143) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(154) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(165) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(176) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products. The director is authorized to regulate, as deemed necessary, commercial livestock truck washing facilities. This includes permitting for the treatment or disposal, at any location, of any wash water generated by the facility. This subsection preempts Idaho department of environmental quality's authority to issue land application permits and to do plan and specification reviews under section 39-118, Idaho Code, for livestock truck wash facilities, but does not affect any other authority of the Idaho department of environmental quality.

(187) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(198) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

~~(2019) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.~~

(210) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(221) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct

tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection (~~221~~), the director shall prescribe and promulgate rules pursuant to chapter 52, title 67, Idaho Code.

(~~232~~) Prescribe by rule an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve percent (12%) per annum.

(~~243~~) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(~~254~~) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection (~~254~~) with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

(~~265~~) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

(~~276~~) Cooperate with producers, industry and technology groups, and other agencies to encourage the growth of technology within the state's agricultural industries while protecting, as necessary, the integrity of existing agriculture and agricultural marketing channels.

Approved March 17, 2009.

CHAPTER 33
(H.B. No. 45)

AN ACT

RELATING TO PSYCHOLOGISTS; AMENDING SECTION 54-2302, IDAHO CODE, TO DEFINE A TERM, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2303, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PROVISIONS RELATING TO EXEMPTIONS FROM LICENSURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2304, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE A PROVISION RELATING TO NOTICE REQUIREMENTS FOR BOARD MEETINGS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2305, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PROVISIONS RELATING TO POWERS OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-2306, IDAHO CODE, RELATING TO THE EXEMPTION OF SOCIAL PSYCHOLOGISTS; AMENDING SECTION 54-2307, IDAHO CODE, TO REVISE PROVISIONS RELATING TO QUALIFICATIONS FOR LICENSURE, TO INCREASE THE APPLICATION FEE CAP AND TO MAKE TECH-

NICAL CORRECTIONS; AMENDING SECTION 54-2309, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REVOCATION, SUSPENSION, RESTRICTION AND DISCIPLINE OF A LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2312, IDAHO CODE, TO REVISE CERTAIN FEES, TO REVISE PROVISIONS RELATING TO QUALIFICATIONS FOR LICENSURE AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-2312A, IDAHO CODE, TO REVISE CERTAIN FEES AND TO REVISE PROVISIONS RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN PSYCHOLOGISTS SEEKING LICENSURE; AND AMENDING SECTION 54-2315, IDAHO CODE, TO INCREASE THE LICENSE RENEWAL FEE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2302, Idaho Code, be, and the same is hereby amended to read as follows:

54-2302. DEFINITIONS. Within the meaning of this ~~act~~ chapter the following definitions ~~obtain~~ apply:

(~~a~~1) "Department" means the department of self-governing agencies of the state of Idaho.

(~~b~~2) "Bureau chief" means the chief of the bureau of occupational licenses of the state of Idaho.

(~~e~~3) "Board" means the Idaho state board of psychologist examiners.

(~~d~~4) "Person," "he" and "his" mean either male or female persons unless a contrary intention is made manifest. None of these words shall be taken to mean other than a natural person.

(~~e~~5) "Psychological services" means any services to which the words "psychological," "psychologist" or "psychology" are applied by the person rendering or offering to render them or to the "practice of psychology" as defined in subsection 54-2302 (~~f~~6), Idaho Code of this section.

(~~f~~6) "Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment. The application of said principles includes, but is not restricted to, counseling and the use of psychotherapeutic measures with persons or groups to eliminate symptomatic, maladaptive or undesired behavior so as to enhance interpersonal relationships in the areas of work, family, school, and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes, and skills; diagnosing and treating mental and emotional disorders or disabilities; and doing research on problems relating to human behavior.

(~~g~~7) A person represents himself to be a psychologist when he holds himself out to the public by any title or description incorporating the words "psychological," "psychologist" or "psychology" or offers to render or renders psychological services for remuneration.

(8) "Temporary permit" means a document issued by the board to a psychologist licensed in another state authorizing the individual to practice psychology in Idaho for a limited period as set forth in this chapter and rules of the board.

SECTION 2. That Section 54-2303, Idaho Code, be, and the same is hereby amended to read as follows:

54-2303. LICENSE REQUIRED -- EXEMPTIONS. (1) It shall be unlawful for any person to practice or to offer to practice psychology, or to represent himself to be a psychologist, unless he shall first obtain a license pursuant to this ~~act~~ chapter, except as hereinafter provided.

(~~a~~2) Nothing in this chapter shall be construed to limit the activities, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or other political subdivision, insofar ~~that~~ as such activities or services are a part of the duties in

his salaried position, and insofar ~~that~~ as such activities or services are performed solely on behalf of his employer.

(~~b~~3) Nothing in this chapter shall be construed to limit the activities and services of a student, interne, or resident in psychology, pursuing a course of study approved by the board as qualifying training and experience for psychologists, provided that such activities and services constitute a part of his supervised course of study, and he is designated by such titles as "psychology interne," "psychology trainee," or other title clearly indicating such training status. Nothing in this chapter shall be construed to limit the activities of a person employed by a duly chartered educational institution solely as an administrator, teacher, or researcher or combination thereof in the discharge of those duties.

(~~e~~4) Nothing in this chapter shall be construed to prevent unlicensed persons from providing certain services under the direct supervision and control of licensed psychologists, under such rules as may be established by the board.

(~~e~~5) Nothing in this chapter shall be construed to prevent qualified members of other professions ~~such as physicians, licensed counselors, or social workers~~ licensed or registered by the state of Idaho from doing work of a psychological nature consistent with their training and consistent with the code of ethics of their respective professions.

SECTION 3. That Section 54-2304, Idaho Code, be, and the same is hereby amended to read as follows:

54-2304. ESTABLISHMENT OF BOARD OF PSYCHOLOGIST EXAMINERS. There is hereby created in the department of self-governing agencies, an Idaho state board of psychologist examiners as follows:

(~~a~~1) Said board shall consist of four (4) licensed psychologist members and one (1) public member who is not a practitioner or spouse of a practitioner in any health care field and who is not a convicted felon and who has not been an applicant for licensure as a psychologist, who are citizens of the United States, residents of the state of Idaho, and appointed by the governor for four (4) year terms. The psychologist members' terms shall be staggered such that only one (1) term expires June 30 of each year.

(~~b~~2) Each psychologist board member shall be licensed under this ~~act~~ chapter.

(~~e~~3) When the term of each psychologist member of the board ends, the governor shall appoint his successor for a term of four (4) years from a list of eligible candidates for board membership submitted to the governor by the president of the Idaho psychological association. Any vacancy occurring on the board shall be filled by the governor, from a list of all eligible candidates for board membership, by appointment for the unexpired term. The governor may give consideration to recommendations from any source in making appointments of the public member to a full or unexpired term. The governor may remove any board member for misconduct, incompetency, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon.

(~~e~~4) At all times, the board shall have at least one (1) member who is engaged primarily in rendering services in psychology and at least one (1) member who is engaged primarily in teaching, training, or research in psychology.

(~~e~~5) No board member shall serve more than two (2) consecutive terms.

(~~f~~6) Each board member shall be compensated as provided by section 59-509(n), Idaho Code.

(~~g~~7) The board shall annually in the month of July, hold a meeting, and elect a chairman and vice chairman. The board shall meet at such other times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Reasonable notice of all meetings shall be

given ~~in the manner prescribed by the board~~ as required by law. A majority of the board shall constitute a quorum at any meeting or hearing.

SECTION 4. That Section 54-2305, Idaho Code, be, and the same is hereby amended to read as follows:

54-2305. BOARD OF PSYCHOLOGIST EXAMINERS -- POWERS. The board of psychologist examiners shall have the following powers:

(a~~1~~) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses; and, at its option to adopt and revise rules requiring applicants to pass examinations relating to their qualifications as a prerequisite to the issuance of licenses.

(b~~2~~) To adopt, and, from time to time, revise such rules in accordance with the provisions of chapter 52, title 67, Idaho Code, and not inconsistent with the law as may be necessary to carry into effect the provisions of this ~~act~~ chapter. Such rules shall include, but need not be limited to, ~~(1)~~ a code of ethics for psychologists in the state consistent with the current, and as future amended, ethical standards for psychologists of the American psychological association, ~~(2)~~ and the educational and professional qualifications of applicants for licensing under this ~~act~~ chapter.

(e~~3~~) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of psychologists and psychologist applicants pursuant to this ~~act~~ chapter, and to conduct hearings in connection therewith.

(d~~4~~) To conduct hearings upon complaints concerning violations of the provisions of, and the rules adopted pursuant to, this act chapter and cause the prosecution and enjoinder of all such violations.

(e~~5~~) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated. It shall be the duty of any district court in this state, on application by the board, to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of the subpoena issued from such court for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(f~~6~~) Proceedings before the board and judicial review of the action of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(g~~7~~) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(h~~8~~) To adopt a rule requiring continuing education as a condition of continued licensure.

(9) To adopt rules allowing for a temporary permit to individuals licensed as psychologists in another state authorizing such individuals to practice psychology in Idaho for a period not to exceed thirty (30) days pursuant to such terms and requirements as set forth in the rules.

(10) To establish by rule an inactive license status.

SECTION 5. That Section 54-2306, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 54-2307, Idaho Code, be, and the same is hereby amended to read as follows:

54-2307. QUALIFICATIONS FOR LICENSE -- APPLICANTS FOR WHOM AN EXAMINATION MAY BE REQUIRED. An applicant shall be qualified for a license to practice psychology provided proof satisfactory to the board has been received showing:

- (a1) Acceptable moral character; and
- (b2) Either one of the following:
 - (1a) ~~g~~Graduation from an accredited college or university with a doctoral degree of doctor of philosophy in psychology and two (2) years of postgraduate supervised experience acceptable to the board, ~~such two (2) years not to include terms of internship,~~ one (1) year of which may include a predoctoral practicum or internship and one (1) of which must be postdoctoral; or
 - (2b) ~~g~~Graduation from an recognized accredited college or university with a doctoral degree in a field related to psychology, provided experience and training are acceptable to the board; and
- (e3) Successful passage of an examination if such examination is required by the rules duly adopted by the board; and
- (d4) Receipt of a completed application accompanied by an application fee as established by board rules not to exceed ~~two~~ three hundred dollars (\$~~2~~300), and when an examination is required a processing fee of twenty-five dollars (\$25.00) payable to the bureau of occupational licenses. The fee for any required examination or reexamination shall be submitted directly to the national examining entity. The application fee and the processing fee are not refundable.

SECTION 7. That Section 54-2309, Idaho Code, be, and the same is hereby amended to read as follows:

54-2309. NONISSUANCE AND REVOCATION OF LICENSE. No license may be issued, and a license previously issued may be revoked, ~~or~~ suspended, restricted or otherwise disciplined if the person applying, or the person licensed be:

- (a1) Found guilty by a court of competent jurisdiction of a felony;
- (b2) Found by the board to be a repeated and excessive abuser of a controlled substance;
- (e3) Found by the board to be a repeated and excessive abuser of alcohol;
- (d4) Found by the board to be in violation of any provision of this chapter or any of the rules adopted pursuant to this chapter; or
- (e5) Found by the board to have been unethical as detailed by the current, and future amended, ethical standards of the American ~~P~~psychological Association.

SECTION 8. That Section 54-2312, Idaho Code, be, and the same is hereby amended to read as follows:

54-2312. QUALIFICATIONS FOR LICENSE -- ENDORSEMENT. The board may recommend the granting of a license to any person who is licensed or certified by a regulatory board of psychologists in the United States or Canada where such certification or licensure was based on a doctoral degree and who:

- (1) Submits a complete application, including the application fee and a license fee not to exceed ~~two~~ three hundred dollars (\$~~2~~300) as established by board rule;
- (2) Is of good moral character;
- (3) Has not had a certification or license revoked, suspended or otherwise sanctioned; and

(4) Has certified under oath that they have reviewed and will abide by the laws and rules governing the practice of psychology in Idaho and the code of ethics of the American psychological association and either:

- (a) Holds a current certificate of professional qualification in psychology or holds a certificate of professional standing issued by a national credentialing entity approved by the board by rule; or
- (b) Meets the requirements of section 54-2307(~~2~~), Idaho Code, and board rules relating to endorsement and educational and credentialing requirements for licensure.

SECTION 9. That Section 54-2312A, Idaho Code, be, and the same is hereby amended to read as follows:

54-2312A. SENIOR PSYCHOLOGIST. The board may grant a license to any person who submits a completed application, including the application fee and a license fee not to exceed ~~two~~ three hundred dollars (~~\$2300~~) as established by board rule, and who:

- (1) Is of good moral character;
- (2) Has maintained a valid psychology license based on a doctoral degree in the United States or Canada for a period of not less than twenty (20) years;
- (3) Has a documented record of psychology practice for five (5) of the last seven (7) years immediately prior to the date of application;
- (4) Has ~~met~~ a documented record of meeting the continuing education requirement of the ~~board~~ jurisdiction where they practiced for not less than five (5) calendar years immediately prior to the date of application;
- (5) Has not been the subject of any disciplinary action within the last seven (7) years prior to application or has never voluntarily surrendered a license to practice psychology in any jurisdiction; and
- (6) Has certified under oath that he has reviewed and will abide by the laws and rules governing the practice of psychology in Idaho and the code of ethics of the American psychological association.

SECTION 10. That Section 54-2315, Idaho Code, be, and the same is hereby amended to read as follows:

54-2315. ADMINISTRATION BY BUREAU OF OCCUPATIONAL LICENSES -- FEE FOR RENEWAL OF LICENSE -- RENEWAL AND REINSTATEMENT. This chapter shall be administered by the bureau of occupational licenses. The fee for renewal of license shall be a fee as established by board rule not to exceed ~~three~~ four hundred dollars (~~\$3400~~) per annum. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

Approved March 17, 2009.

CHAPTER 34
(H.B. No. 123)

AN ACT

RELATING TO PUBLIC ASSISTANCE AND WELFARE; AMENDING SECTION 56-102, IDAHO CODE, TO REMOVE AN EXCEPTION FOR THE IDAHO STATE VETERANS HOMES, TO PROVIDE PRINCIPLES TO APPLY TO THE REIMBURSEMENT OF THE IDAHO STATE VETERANS HOMES, TO REMOVE A PROVISION FOR PAYMENT TO SKILLED CARE FACILITIES, TO PROVIDE AN ADJUSTMENT TO SKILLED CARE FACILITY PROSPECTIVE RATES WITH AN EXCEPTION, TO PROVIDE A MAXIMUM INCENTIVE PAYMENT AND TO

MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 56-113, IDAHO CODE, TO PROVIDE FOR THE SAME RATE TO BE PAID TO INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED FOR A CERTAIN PERIOD OF TIME AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-136, IDAHO CODE, TO PROVIDE FOR THE SAME RATE TO BE PAID TO MEDICAID-COVERED PHYSICIAN AND DENTIST SERVICES FOR A CERTAIN PERIOD OF TIME, TO REVISE THE IDENTITY OF AN INDEX PUBLISHER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-255, IDAHO CODE, TO PROVIDE NONEMERGENCY MEDICAL TRANSPORTATION BENEFITS TO CERTAIN PERSONS AND TO REMOVE NONEMERGENCY MEDICAL TRANSPORTATION BENEFITS FOR CERTAIN PERSONS; AMENDING SECTION 56-1401, IDAHO CODE, TO REVISE LEGISLATIVE INTENT; AMENDING SECTION 56-1402, IDAHO CODE, TO DEFINE NEW TERMS; AMENDING SECTION 56-1404, IDAHO CODE, TO PROVIDE FOR THE CALCULATION OF AN UPPER PAYMENT LIMIT ASSESSMENT RATE AND THE METHODOLOGY THEREFOR, TO PROVIDE FOR THE CALCULATION OF A DISPROPORTIONATE SHARE ASSESSMENT RATE FOR CERTAIN HOSPITALS AND THE METHODOLOGY THEREFOR, AND TO PROVIDE A LIMIT ON ASSESSMENTS FOR CERTAIN HOSPITALS; AMENDING SECTION 56-1406, IDAHO CODE, TO REVISE TIMING FOR MAKING CERTAIN PAYMENTS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 56-1410, IDAHO CODE, TO REVISE THE CIRCUMSTANCES UNDER WHICH A CERTAIN ASSESSMENT SHALL NOT TAKE EFFECT OR SHALL CEASE TO BE IMPOSED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 56-102, Idaho Code, be, and the same is hereby amended to read as follows:

56-102. PRINCIPLES OF PROSPECTIVE RATES AND PAYMENT. The following principles shall apply to the reimbursement of freestanding skilled care and ~~hospital-based~~ hospital based skilled care facilities and Idaho state veterans homes, with the exception of the nursing ~~facilities~~ facility at ~~Idaho state veterans homes~~ and state hospital south, which shall be reimbursed costs based on medicare reasonable cost provisions:

(1) Payments to facilities shall be through a prospective cost-based system which includes facility-specific case mix adjustments. Details of the methodology shall be set forth in rules based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing ~~hospital-based~~ hospital based skilled care facilities. In no event shall reimbursement to any facility exceed the usual and customary charges made to private pay patients; and

(2) Each skilled care facility's case mix index shall be calculated quarterly and rates shall be adjusted based on the case mix of that facility's medicaid residents as of a certain date during the preceding quarter as specified in rule; and

(3) ~~In state fiscal year 2000, the total amount paid to skilled care facilities shall approximate the same amount in medicaid expenditures as would have been paid using the methodology in effect in state fiscal year 1999, and the percentages of medicaid funds projected to be paid to freestanding skilled care facilities and hospital-based skilled care facilities shall be the same percentages that are projected to be paid using the methodology in effect during state fiscal year 1999~~ With the exception of the nursing facilities at Idaho state veterans homes, each skilled care facility's quarterly rate will be decreased two and seven-tenths percent (2.7%) from July 1, 2009, through June 30, 2010; and

(4) The cost limits used for the direct care and indirect care costs of rural ~~hospital-based~~ hospital based skilled care facilities shall be higher than the cost limits used for the direct care and indirect care costs of free-

standing skilled care and urban ~~hospital-based~~ hospital based skilled care facilities; and

(5) In computing the direct care per diem rate neither medicaid-related ancillary services nor raw food shall be case-mix adjusted; and

(6) Property costs shall not be subject to a cost limitation or incentive. Property costs of freestanding skilled care facilities shall be reimbursed as described in section 56-108, Idaho Code, and property costs of urban and rural ~~hospital-based~~ hospital based skilled care facilities shall be reimbursed as described in section 56-120, Idaho Code; and

(7) Cost limits shall apply to direct care costs and indirect care costs. The cost limits shall be based on percentages above the bed-weighted median of the combined costs of both freestanding skilled care and ~~hospital-based~~ hospital based skilled care facilities; and

(8) Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined by rule; and

(9) An incentive payment shall be paid to those facilities with indirect per diem costs that are less than the established indirect care cost limit. The incentive payment is calculated by taking the difference between the cost limits and the provider's per diem indirect care cost times the incentive percentage up to a maximum of nine dollars and fifty cents (\$9.50) per patient day. Freestanding skilled care and ~~hospital-based~~ hospital based skilled care facilities shall receive the same percentage incentive payments for indirect care costs but no incentive payment for direct care costs. The percentage at which the incentive payment will be set shall be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing ~~hospital-based~~ hospital based skilled care facilities; and

(10) A newly constructed facility shall be reimbursed at the median rate for skilled care facilities of that type (freestanding or ~~hospital-based~~ hospital based) for the first three (3) full years of operation; and

(11) A facility adding new beds will have its rates for the three (3) full years following the addition of the beds subjected to an additional reimbursement limitation. This limitation will apply beginning with the first rate setting period which uses a cost report that includes the date when the beds were added. The facility's rate will be limited to the bed-weighted average of two (2) rates: the facility's rate in effect immediately prior to the rate first subject to the limitation and the median rate for skilled care facilities of that type (freestanding or ~~hospital-based~~ hospital based) at the time the beds were added; and

(12) A facility acquired prior to the end of that facility's fiscal year will be reimbursed at the rate then in effect for that facility until the next cost report can be used for rate setting. If the department determines that the facility is operationally or financially unstable, the department may negotiate a reimbursement rate different than the rate then in effect for that facility; and

(13) If the department determines that a facility is located in an ~~under-served~~ underserved area, or addresses an underserved need, the department may negotiate a reimbursement rate different than the rate then in effect for that facility; and

(14) From July 1, 1999, through June 30, 2002, the nursing facility inflation rate plus one percent (1%) per year shall be added to the costs reported in a facility's cost report for purposes of setting that facility's rate. The inflation rate to be used effective July 1, 2002, and the period of its use will be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing ~~hospital-based~~ hospital based skilled care facilities; and

(15) To control the growth in the cost limits, the increase in the cost limits shall not exceed the skilled nursing facility inflation rate established by data resources, inc., or its successor, plus two percent (2%) per year for the period from July 1, 1999, through June 30, 2002. The maximum rate of growth in the cost limits to be used effective July 1, 2002, and the period of its use will be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing ~~hospital-based~~ hospital based skilled care facilities; and

(16) To control declines in the cost limits, the cost limits for the period from July 1, 1999, through June 30, 2002, shall not be lower than the respective cost limits effective July 1, 1999. The minimum cost limits to be used effective July 1, 2002, and the period of ~~its~~ their use will be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing ~~hospital-based~~ hospital based skilled care facilities; and

(17) Rates shall be ~~re-based~~ rebased annually. Rate setting shall be prospective with new rates effective July 1 of each year, using the principles applying to skilled care facilities set forth in this chapter and the rules promulgated pursuant to this chapter. There will be no settlement between actual costs incurred during the rate year and the rate itself. Rates will be established using the most recent audited cost report trended forward to the rate year. Rates for skilled care facilities with unaudited cost reports will be interim rates established by the department until a rate is calculated based on an audited cost report. The draft audit of a cost report submitted by a facility shall be issued by the department no later than five (5) months from the date all information required for completion of the audit is filed with the department; and

(18) Changes of more than fifty cents (50¢) per patient day in allowable costs resulting from federal or state law or rule changes shall be treated as costs separate from the cost limitations until such time as they become part of the data used for calculating the cost limits and in cost reports used for rate setting; and

(19) If a review of the data submitted by a facility reveals errors that result in an incorrect case mix index, the department may retroactively adjust the facility's rate and pay the facility any amount by which the facility was underpaid or recoup from the facility any amount by which the facility was overpaid; and

(20) The rates established under the principles set forth in this section shall be phased in using a combination of the reimbursement methodology in effect as of state fiscal year 1999 and the principles set forth in this section and in rules based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing ~~hospital-based~~ hospital based skilled care facilities. Effective July 1, 2001, the ~~phase-in~~ phase in provisions will no longer apply and the department shall pay rates solely based on the principles set forth in this section and the applicable rules.

SECTION 2. That Section 56-113, Idaho Code, be, and the same is hereby amended to read as follows:

56-113. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED. (1) Services provided by intermediate care facilities for the mentally retarded, with the exception of state operated facilities, shall be paid in accordance with the provisions of this section, and not as provided in any other section of this chapter, unless otherwise provided in this section. State operated facilities shall be reimbursed costs based on medicare reasonable cost provisions.

(2) Except as otherwise provided in this section, intermediate care facilities for the mentally retarded shall remain at the rate paid in state fiscal year 2009 through June 30, 2010. Thereafter, intermediate care facilities for the mentally retarded shall be reimbursed based on a prospective rate system without retrospective settlement effective October 1, 1996. In no event, shall payments to this class of facility exceed, in the aggregate, the amount which would be reimbursed using medicare cost reimbursement methods as defined in the medicare provider reimbursement manual (HCFA - pub. 15).

(3) The prospective rate shall consist of the following components:

(a) A component for reasonable property costs which shall be computed using the property rental rate methodology set forth in section 56-108, Idaho Code, with the exceptions that the base rate shall exclude major moveable equipment and grandfathered rates will not apply. The initial base rate shall be eight dollars and ninety-four cents (\$8.94) for facilities that accommodate residents in wheelchairs and five dollars and eighty-one cents (\$5.81) for facilities that cannot accommodate residents in wheelchairs. The rates shall be adjusted annually as provided in section 56-108, Idaho Code; and

(b) A component for forecasted reasonable day treatment costs which shall be subject to a per patient day limit as provided in rule; and

(c) A component for all other allowable costs as determined in accordance with department rules which shall be subject to a limitation based on a percentage of the forecasted median for such costs of intermediate care facilities for the mentally retarded, excluding state operated facilities; and

(d) A component that provides an efficiency increment payment of twenty cents (~~\$~~-20¢) for each one dollar (\$1.00) per patient day that the facility is under the limit described in subsection (3) (c) of this section up to a maximum payment of three dollars (\$3.00) per patient day.

(4) The director may require retrospective settlement as provided by rule in limited circumstances including, but not limited to:

(a) The facility fails to meet quality of care standards; or

(b) The facility is new or operated by a new provider, until such time as a prospective rate is set; or

(c) The prospective rate resulted from fraud, abuse or error.

(5) The director shall have authority to provide by rule, exceptions to the limitations described in subsection (3) of this section.

(6) The director shall promulgate the rules necessary to carry out the provisions of this section.

SECTION 3. That Section 56-136, Idaho Code, be, and the same is hereby amended to read as follows:

56-136. PHYSICIAN AND DENTIST REIMBURSEMENT. (1) The rate of reimbursement for all medicaid-covered physician and dentist services rendered to medicaid recipients shall remain at the rate paid in state fiscal year 2009 through June 30, 2010. Thereafter, the reimbursement rate for all medicaid-covered physician and dentist services rendered to medicaid recipients shall be adjusted each fiscal year. Each fiscal year adjustment shall be determined by the director and shall equal the year over year inflation rate forecasted as of the midpoint of the fiscal year by the all item, goods and services index in the pacific northwest as published by ~~data resources incorporated~~ global insights, inc., or its successor. Such forecast index shall be the last published forecast prior to the start of the fiscal year. Provided however, an adjustment may exceed the index rate cited in this section at the discretion of the legislature.

(2) Actual payments made by the director to each physician and dentist shall not exceed the usual and customary charges made to private pay patients.

(3) For the purposes of this section:

(a) "~~Physician~~Physician" means a person licensed to practice medicine pursuant to chapter 18, title 54, Idaho Code.

(b) "Dentist" means a person licensed to practice dentistry pursuant to chapter 9, title 54, Idaho Code.

(4) The amount to be paid under the provisions of this section shall in no event exceed any limitations imposed by federal law or regulation.

SECTION 4. That Section 56-255, Idaho Code, be, and the same is hereby amended to read as follows:

56-255. MEDICAL ASSISTANCE PROGRAM -- SERVICES TO BE PROVIDED. (1) The department may make payments for the following services furnished by providers to participants who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be reimbursed only when medically necessary and in accordance with federal law and regulation, Idaho law and department rule. Notwithstanding any other provision of this chapter, medical assistance includes the following benefits specific to the eligibility categories established in section 56-254(1), (2) and (3), Idaho Code, as well as a list of benefits to which all Idaho medicaid participants are entitled, defined in subsection (5) of this section.

(2) Specific health benefits and limitations for low-income children and working-age adults with no special health needs include:

(a) All services described in subsection (5) of this section;

(b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found; and

(c) Cost-sharing required of participants. Participants in the low-income children and working-age adult group are subject to the following premium payments, as stated in department rules:

(i) Participants with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guideline are not required to pay premiums; and

(ii) Participants with family incomes above one hundred thirty-three percent (133%) of the federal poverty guideline will be required to pay premiums in accordance with department rule.

(3) Specific health benefits for persons with disabilities or special health needs include:

(a) All services described in subsection (5) of this section;

(b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found;

(c) Case management services as defined in accordance with section 1905(a)(19) or section 1915(g) of the social security act; and

(d) Mental health services, including:

(i) Inpatient psychiatric facility services whether in a hospital, or for persons under age twenty-two (22) years in a freestanding psychiatric facility, as permitted by federal law, in excess of those limits in department rules on inpatient psychiatric facility services provided under subsection (5) of this section;

(ii) Outpatient mental health services in excess of those limits in department rules on outpatient mental health services provided under subsection (5) of this section; and

(iii) Psychosocial rehabilitation for reduction of mental disability for children under the age of eighteen (18) years with a

- serious emotional disturbance (SED) and for severely and persistently mentally ill adults, aged eighteen (18) years or older, with severe and persistent mental illness;
- (e) Long-term care services, including:
 - (i) Nursing facility services, other than services in an institution for mental diseases, subject to participant cost-sharing;
 - (ii) Home-based and community-based services, subject to federal approval, provided to individuals who require nursing facility level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including an option for self-determination, which will enable individuals to have greater freedom to manage their own care; and
 - (iii) Personal care services in a participant's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse;
 - (f) Services for persons with developmental disabilities, including:
 - (i) Intermediate care facility services, other than such services in an institution for mental diseases, for persons determined in accordance with section 1902(a)(31) of the social security act to be in need of such care, including such services in a public institution, or distinct part thereof, for the mentally retarded or persons with related conditions;
 - (ii) Home-based and community-based services, subject to federal approval, provided to individuals who require an intermediate care facility for the mentally retarded (ICF/MR) level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including an option for self-determination, which will enable individuals to have greater freedom to manage their own care; and
 - (iii) Developmental services. The department shall pay for rehabilitative services, including medical or remedial services provided by a facility that has entered into a provider agreement with the department and is certified as a developmental disabilities agency by the department;
 - (g) Home health services, including:
 - (i) Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no home health agency exists in the area;
 - (ii) Home health aide services provided by a home health agency; and
 - (iii) Physical therapy, occupational therapy or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility;
 - (h) Hospice care in accordance with section 1905(o) of the social security act;
 - (i) Specialized medical equipment and supplies; and
 - (j) Medicare cost-sharing, including:
 - (i) Medicare cost-sharing for qualified medicare beneficiaries described in section 1905(p) of the social security act;
 - (ii) Medicare part A premiums for qualified disabled and working individuals described in section 1902(a)(10)(E)(ii) of the social security act;
 - (iii) Medicare part B premiums for specified low-income medicare beneficiaries described in section 1902(a)(10)(E)(iii) of the social security act; and

(iv) Medicare part B premiums for qualifying individuals described in section 1902(a)(10)(E)(iv) and subject to section 1933 of the social security act; and

(k) Nonemergency medical transportation.

(4) Specific health benefits for persons over twenty-one (21) years of age who have medicare and medicaid coverage include:

(a) All services described in subsection (5) of this section, other than if provided under the federal medicare program;

(b) All services described in subsection (3) of this section, other than if provided under the federal medicare program; ~~and~~

(c) Other services that supplement medicare coverage; and

(d) Nonemergency medical transportation.

(5) Benefits for all medicaid participants, unless specifically limited in subsection (2), (3) or (4) of this section include the following:

(a) Health care coverage including, but not limited to, basic inpatient and outpatient medical services, and including:

(i) Physicians' services, whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere;

(ii) Services provided by a physician or other licensed practitioner to prevent disease, disability and other health conditions or their progressions, to prolong life, or to promote physical or mental health; and

(iii) Hospital care, including:

1. Inpatient hospital services other than those services provided in an institution for mental diseases;

2. Outpatient hospital services; and

3. Emergency hospital services;

(iv) Laboratory and x-ray services;

(v) Prescribed drugs;

(vi) Family planning services and supplies for individuals of child-bearing age;

(vii) Certified pediatric or family nurse practitioners' services;

(viii) Emergency medical transportation;

(ix) Mental health services, including:

1. Outpatient mental health services that are appropriate, within limits stated in department rules; and

2. Inpatient psychiatric facility services within limits stated in department rules;

(x) Medical supplies, equipment, and appliances suitable for use in the home; and

(xi) Physical therapy and related services;

(b) Primary care case management;

(c) Dental services, and medical and surgical services furnished by a dentist in accordance with section 1905(a)(5)(B) of the social security act;

(d) Medical care and any other type of remedial care recognized under Idaho law, furnished by licensed practitioners within the scope of their practice as defined by Idaho law, including:

(i) Podiatrists' services;

(ii) Optometrists' services;

(iii) Chiropractors' services; and

(iv) Other practitioners' services, in accordance with department rules;

(e) Services for individuals with speech, hearing and language disorders, provided by or under the supervision of a speech pathologist or audiologist;

(f) Eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

- (g) Services provided by essential providers, including:
- (i) Rural health clinic services and other ambulatory services furnished by a rural health clinic in accordance with section 1905(1) (1) of the social security act;
 - (ii) Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with section 1905(1) (2) of the social security act;
 - (iii) Indian health services;
 - (iv) District health departments; and
 - (v) The family medicine residency of Idaho and the Idaho state university family medicine residency;
- (h) Any other medical care and any other type of remedial care recognized under state law, specified by the secretary of the federal department of health and human services; and
- (i) ~~Nonemergency medical transportation; and~~
~~(j)~~ Physician, hospital or other services deemed experimental are excluded from coverage. The director may allow coverage of procedures or services deemed investigational if the procedures or services are as cost-effective as traditional, standard treatments.

SECTION 5. That Section 56-1401, Idaho Code, be, and the same is hereby amended to read as follows:

56-1401. SHORT TITLE -- LEGISLATIVE INTENT. (1) This chapter shall be known and may be cited as the "Idaho Hospital Assessment Act."

(2) It is the intent of the legislature to encourage the maximization of financial resources eligible and available for medicaid services by establishing a fund within the Idaho department of health and welfare to receive private hospital assessments to use in securing federal matching funds under federally prescribed upper payment limit and disproportionate share hospital programs available through the state medicaid plan.

SECTION 6. That Section 56-1402, Idaho Code, be, and the same is hereby amended to read as follows:

56-1402. DEFINITIONS. As used in this chapter:

(1) "Department" means the department of health and welfare.

(2) "Disproportionate share hospital" means a hospital that serves a disproportionate share of medicaid low-income patients as compared to other hospitals as determined by department rule.

(3) "Governmental entity" means and includes the state and its political subdivisions.

(24) "Hospital" is as defined in section 39-1301(a), Idaho Code.

(35) "Political subdivision" means a county, city, municipal corporation or hospital taxing district and, as used in this chapter, shall include state licensed hospitals established by counties pursuant to chapter 36, title 31, Idaho Code, or jointly by cities and counties pursuant to chapter 37, title 31, Idaho Code.

(46) "Private hospital" means a hospital that is not owned by a governmental entity.

(57) "Upper payment limit" means a limitation established by federal regulations, 42 CFR 447.272 and 42 CFR 447.321, that disallows federal matching funds when state medicaid agencies pay certain classes of hospitals an aggregate amount for inpatient and outpatient hospital services that would exceed the amount that would be paid for the same services furnished by that class of hospitals under medicare payment principles.

SECTION 7. That Section 56-1404, Idaho Code, be, and the same is hereby amended to read as follows:

56-1404. ASSESSMENTS. (1) All hospitals, except those exempted under section 56-1408, Idaho Code, shall make payments to the fund in accordance with this chapter. Subject to section 56-1410, Idaho Code, an annual assessment on both inpatient and outpatient services is determined for each qualifying hospital for state fiscal years 2009, 2010 and 2011, in an amount calculated by multiplying the rate, as set forth in subsections (2) (b) and (3) (b) of this section, by the assessment base, as set forth in subsection (4) of this section.

(2) (a) The department shall calculate the private hospital upper payment limit gap for both inpatient and outpatient services. The upper payment limit gap is the difference between the maximum allowable payments eligible for federal match, less medicaid payments not financed using hospital assessment funds. The upper payment limit gap shall be calculated separately for hospital inpatient and outpatient services. Medicaid disproportionate share payments shall be excluded from the calculation.

~~(3b) The department shall calculate the upper payment limit assessment rate for state fiscal years 2009, 2010 and 2011 to be the percentage that, when multiplied by the assessment base as defined in subsection (4) of this section, equals the upper payment limit gap determined in subsection paragraph (2a) of this subsection, but is not greater than one and one-half percent (1.5%).~~

(3) (a) The department shall calculate the disproportionate share allotment amount to be paid to private in-state hospitals.

(b) The department shall calculate the disproportionate share assessment rate for private in-state hospitals to be the percentage that, when multiplied by the assessment base as defined in subsection (5) of this section, equals the amount of state funding necessary to pay the private in-state hospital disproportionate share allotment determined in paragraph (a) of this subsection.

(4) For private in-state hospitals, the assessments calculated pursuant to subsections (2) and (3) of this section shall not be greater than two and one-half percent (2.5%) of the assessment base as defined in subsection (5) of this section.

(5) The assessment base shall be the hospital's net patient revenue for the applicable period. "Net patient revenue" for state fiscal year 2009 shall be determined using the most recent data available from each hospital's fiscal year 2004 medicare cost report on file with the department on June 30, 2008, without regard to any subsequent adjustments or changes to such data. Net patient revenue for state fiscal year 2010 shall be determined using the most recent data available for each hospital's fiscal year 2005 medicare cost report on file with the department on June 30, 2009, without regard to any subsequent adjustments or changes to such data. Net patient revenue for state fiscal year 2011 shall be determined using the most recent data available from each hospital's fiscal year 2006 medicare cost report on file with the department on June 30, 2010, without regard to any subsequent adjustments or changes to such data.

SECTION 8. That Section 56-1406, Idaho Code, be, and the same is hereby amended to read as follows:

56-1406. INPATIENT AND OUTPATIENT ADJUSTMENT PAYMENTS. All hospitals, except those exempted under section 56-1408, Idaho Code, shall be eligible for inpatient and outpatient adjustments as follows:

(1) For state fiscal year 2009, the inpatient upper payment limit gap for private hospitals shall be divided by medicaid inpatient days for the

same hospitals from calendar year 2007 to establish an average per diem adjustment rate. Each hospital shall receive an annual payment that is equal to the average per diem adjustment rate multiplied by the hospital's calendar year 2007 medicaid inpatient days. For purposes of this section, "hospital medicaid inpatient days" are days of inpatient hospitalization paid for by the Idaho medical assistance program for the applicable calendar year. For fiscal year 2010, calendar year 2008 inpatient hospital medicaid days shall be utilized to determine the hospital inpatient adjustment payment. For state fiscal year 2011, calendar year 2009 hospital medicaid inpatient days shall be utilized to determine the hospital inpatient adjustment payment. In the event that either the inpatient upper payment limit gap for private hospitals or the available hospital assessment funding is lower than anticipated, the department shall apply an across-the-board factor such that the inpatient payment adjustments are maximized, financed entirely from hospital assessment funding, and do not exceed the Idaho inpatient upper payment limit for private hospitals. Payments shall be made no later than ~~seven~~ thirty (730) days after the ~~due date for receipt of the last deposit of the~~ hospital assessment required in section 56-1404, Idaho Code.

(2) For state fiscal year 2009, the outpatient upper payment limit gap for private hospitals shall be divided by medicaid outpatient hospital reimbursement for the same hospitals from calendar year 2007 to establish an average percentage adjustment rate. Each hospital, except those exempt under section 56-1408, Idaho Code, shall receive an annual payment that is equal to the average percentage adjustment rate multiplied by the hospital's calendar year 2007 hospital medicaid outpatient reimbursement. For purposes of this section, "hospital outpatient reimbursement" is reimbursement for hospital outpatient services paid for by the Idaho medical assistance program for the applicable calendar year. For state fiscal year 2010, calendar year 2008 hospital medicaid outpatient reimbursement shall be utilized to determine the outpatient hospital adjustment payment. For state fiscal year 2011, calendar year 2009 hospital medicaid outpatient reimbursement shall be utilized to determine the outpatient hospital adjustment payment. In the event that either the outpatient upper payment limit gap for private hospitals or the available hospital assessment funding is lower than anticipated, the department shall apply an across-the-board factor, such that outpatient adjustment payments are maximized, financed entirely from hospital assessment funding, and do not exceed the Idaho outpatient upper payment limit for private hospitals. Payments shall be made no later than ~~seven~~ thirty (730) days after the ~~due date for receipt of the last deposit of the~~ hospital assessments required in section 546-1404, Idaho Code.

SECTION 9. That Section 56-1410, Idaho Code, be, and the same is hereby amended to read as follows:

56-1410. APPLICABILITY. (1) The assessment required by section 56-1404, Idaho Code, shall not take effect or shall cease to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion to the amounts paid by such hospitals if:

(a) ~~The appropriation for each state fiscal year 2009, 2010 and 2011 from the general fund for hospital payments under created in section 56-1403, Idaho Code, is used to replace moneys appropriated to the Idaho medical assistance program is less than that for fiscal year 2008 by the legislature; or~~

(b) ~~The department makes changes in its rules that reduce the hospital inpatient or outpatient payment rates, including adjustment payment rates, in effect on January 1, 2008; or~~

~~(e)~~ The payments to hospitals required under section 56-1403(3), Idaho Code, are changed or are not eligible for federal matching funds under the Idaho medical assistance program.

(2) The assessment required by section 56-1404, Idaho Code, shall not take effect or shall cease to be required if the assessment is not approved or is determined to be impermissible under title XIX of the social security act. Moneys in the fund derived from assessments required prior thereto shall be distributed in accordance with section 56-1403(3), Idaho Code, to the extent federal matching funds are not reduced due to the impermissibility of the assessments, and any remaining moneys shall be refunded to hospitals in proportion to the amounts paid by such hospitals.

SECTION 10. An emergency existing therefor, which emergency is hereby declared to exist, Section 4 of this act shall be in full force and effect on and after passage and approval, and retroactively to April 1, 2009.

Approved March 17, 2009.

CHAPTER 35

(H.B. No. 64, As Amended in the Senate, As Amended in the Senate)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES TO THE INTERNAL REVENUE CODE AND TO PROVIDE THAT THE ADDITIONAL STANDARD DEDUCTION FOR REAL PROPERTY TAXES FOR NONITEMIZERS DOES APPLY; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND RETROACTIVE EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the ~~fourteenth~~ first day of ~~February, 2008~~ January, 2009.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

(c) Notwithstanding the provisions of section 63-3022(j), Idaho Code, the provisions of section 3012 of Public Law 110-289, "The Housing and Economic Recovery Act of 2008" providing an additional standard deduction for real property taxes for individuals who do not itemize their deductions are adopted under subsections (a) and (b) of this section.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2009; Except the provision of subsection (c) of section 63-3004, Idaho Code, as amended in Section 1 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2008.

Approved March 17, 2009.

CHAPTER 36

(H.B. No. 31, As Amended in the Senate)

AN ACT

RELATING TO THE IDAHO FORESTRY ACT; AMENDING SECTION 38-111, IDAHO CODE, TO REVISE CERTAIN COSTS RELATING TO THE PROTECTION AGAINST WILDFIRES, TO PROVIDE FOR THE WILDFIRE EQUIPMENT REPLACEMENT FUND, AND TO PROVIDE THAT THE DEPARTMENT OF LANDS SHALL DETERMINE CERTAIN REIMBURSEMENT RATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 38-111, Idaho Code, be, and the same is hereby amended to read as follows:

38-111. PROTECTION BY OWNER -- ASSESSMENTS -- BUDGET OF PROTECTIVE DISTRICTS. Every owner of forest lands in the state shall furnish or provide therefor, throughout the closed season, protection against the starting, existence or spread of fires thereon, or therefrom, in conformity with reasonable rules and standards for adequate protection, to be established by the state board of land commissioners. An owner of forest lands who maintains a membership in good standing in a forest protective association operating under agreement with the state board of land commissioners, which association maintains a standard of protection approved by said board and who pays the assessments to the association in the amounts required in this section, shall be deemed to have fully complied herewith. In the event the owner of any forest land shall neglect or fail to furnish the protection required in this section, the director of the department of lands shall provide such patrol and protection therefor at actual cost to the owner of forest lands. For private owners of forest lands whose total acres of forest lands are twenty-six (26) acres or more, the state board of land commissioners shall establish this cost not to exceed sixty-five cents (60⁵¢) an acre per year. For private owners of forest lands whose total acres of forest lands are twenty-five (25) acres or fewer, the minimum assessment per year shall be equal to the per acre cost multiplied by twenty-five (25).

In addition to any other assessment prescribed in this chapter, the state board of land commissioners shall establish a surcharge to be levied and assessed in an amount not to exceed twenty forty dollars (\$240.00) for each improved lot or parcel, ~~to defray the cost of fire suppression on forest land caused by the existence of the improvements~~ to offset costs associated with wildfire preparedness.

There is hereby established in the state treasury a wildfire equipment replacement fund for the replacement of capital wildfire equipment. The department of lands shall determine reimbursement rates for all capital fire equipment used for activities other than fire preparedness. Reimbursement revenues shall be deposited in the wildfire equipment replacement fund. Additional moneys may be deposited into the wildfire equipment replacement fund from any other source.

In the event an assessment is made in an amount less than the maximum hereinbefore provided, and an actual loss occurs which exceeds the amount budgeted and for which assessments have been made, the director of the department of lands, with the approval of the board, may require an additional assessment to be made and paid, which together with the original assessment shall not exceed the maximum assessment set forth in this section. Such additional assessment shall be levied and collected in the same manner as herein provided for the collection of such original assessments. The liability provided in this section shall be calculated for each forest protection district or association separately, and shall be calculated

solely upon the charges assignable to fire control or presuppression of fires within each district or association.

Each forest protective association actively engaged in forest protection under agreement with the state board of land commissioners shall each year prepare in detail, a budget of all estimated operating costs for the next calendar year and shall submit this budget to the board for approval before June 30 of the current year.

Except for the provisions of section 38-122, Idaho Code, and cases of proven negligence by the landowner or his agent, no other charges or assessments for fire protection shall be made or assessed or collected from those forest landowners participating as provided herein.

Approved March 23, 2009.

CHAPTER 37

(H.B. No. 34, As Amended in the Senate)

AN ACT

RELATING TO COMMODITY DEALERS; AMENDING SECTION 69-503, IDAHO CODE, TO REVISE LICENSE PROVISIONS, TO REQUIRE CERTAIN INSURANCE AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 69-503, Idaho Code, be, and the same is hereby amended to read as follows:

69-503. LICENSE REQUIREMENTS -- FINANCIAL RESPONSIBILITY. (1) A person shall not engage in the business of a commodity dealer in this state without having obtained a license issued by the department.

(2) The type of license required shall be determined as follows:

(a) A class 1 license is required if the commodity dealer purchases agricultural commodities by credit-sale contract or if the value of the agricultural commodities purchased by the commodity dealer from producers during the previous twelve (12) month period exceeds two hundred and fifty thousand dollars (\$250,000), or if the value of the agricultural commodities expected to be purchased by the commodity dealer from the producers during the succeeding twelve (12) month period will exceed two hundred and fifty thousand dollars (\$250,000). Any other commodity dealer may elect to be licensed as a class 1 commodity dealer.

(b) A class 2 license is required for any commodity dealer if the value of the agricultural commodities purchased by the commodity dealer from producers during the previous twelve (12) month period exceeds ten thousand dollars (\$10,000) and is less than two hundred and fifty thousand dollars (\$250,000), ~~and~~ or if the value of the agricultural commodities expected to be purchased by the commodity dealer from producers during the succeeding twelve (12) month period will be more than ten thousand dollars (\$10,000) but less than two hundred and fifty thousand dollars (\$250,000). A class 2 licensee whose purchases from producers exceed two hundred and fifty thousand dollars (\$250,000) in value during any twelve (12) month period shall immediately apply for a class 1 license. If a class 1 license is denied, the person shall immediately cease doing business as a commodity dealer.

(3) An application for a license to engage in business as a commodity dealer shall be filed with the department and shall be on a form prescribed by the department. A separate license is required for each location at which records are maintained for transactions of the commodity dealer.

(4) A license application shall include the following:

- (a) The name of the applicant;
- (b) The names of the officers and directors if the applicant is a corporation;
- (c) The names of the partners if the applicant is a partnership;
- (d) The location of the principal place of business; and
- (e) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.

(5) A license applicant shall further provide a sufficient and valid bond as specified in section 69-506, Idaho Code.

(6) A license applicant shall further provide a complete financial statement setting forth the applicant's assets, liabilities and net worth. This financial statement shall be prepared by an independent certified public accountant or a licensed public accountant according to generally accepted accounting principles. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Assets shall be shown at original cost less depreciation. Upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(7) In order to receive and retain a commodity dealer's license the following additional conditions must be satisfied:

(a) For a class 1 license a commodity dealer shall have and maintain a net worth of at least fifty thousand dollars (\$50,000) or maintain a bond in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of net worth deficiency; however, a person shall not be licensed as a class 1 commodity dealer if the person has a net worth of less than twenty-five thousand dollars (\$25,000). A bond submitted for purposes of this subsection shall be in addition to any bond otherwise required under the provisions of this chapter.

(b) For a class 2 license a commodity dealer shall have and maintain a net worth of at least twenty-five thousand dollars (\$25,000) or maintain a bond in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of net worth deficiency; however, a person shall not be licensed as a class 2 commodity dealer if the person has a net worth of less than ten thousand dollars (\$10,000). A bond submitted for purposes of this subsection shall be in addition to any bond otherwise required under the provisions of this chapter.

(8) The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

(9) Any commodity dealer that accepts physical delivery of a commodity purchased directly from producers, for which the producers have not been paid, must insure the value of all commodities in his possession at full market price for insurable physical perils until all liabilities to producers have been paid.

Approved March 23, 2009.

CHAPTER 38
(H.B. No. 36)

AN ACT

RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-435, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE STATE SEED ADVISORY BOARD; AND AMENDING SECTION 22-436, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SEED ARBITRATION AND THE SEED ARBITRATION COUNCIL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-435, Idaho Code, be, and the same is hereby amended to read as follows:

22-435. STATE SEED ADVISORY BOARD. (1) In order to maintain close contact between the department and the seed industry, there is hereby created a state seed laboratory advisory board which shall consist of ~~eight~~ nine (~~8~~9) official members and ~~eight~~ nine (~~8~~9) ex officio alternates appointed by the director of the department of agriculture from a list provided by the Idaho seed council. The Idaho seed council will nominate a member and an alternate for each vacancy on the advisory board to represent the following seed commodities:

- (a) Cereal grains
- (b) Grasses - turf
- (c) Grasses - forage
- (d) Small seeded legumes
- (e) Corn and small seeded vegetables
- (f) Garden beans
- (g) Field beans
- (h) Oil crops
- (i) Natives.

The executive ~~secretary~~ vice-president of the Idaho crop improvement association shall serve as a permanent ~~ninth~~ tenth official member of the board. The president of the Idaho seed analysts association, or his representative, shall serve as a permanent ~~tenth~~ eleventh official member of the board. Additionally, without the need for any nominations, the director shall appoint one (1) grower member who shall serve as the ~~eleventh~~ twelfth official member of the board and serve a three (3) year term.

(2) ~~The members first appointed shall determine by lot the length of their terms: Four (4) to serve for three (3) years, and four (4) to serve for two (2) years, each term beginning July 1, 1989 Existing member terms will end on the last May 31 of an existing term with the successor term to begin June 1 of the same year. All terms shall be for a period of three (3) years.~~ A member and his alternate shall serve the same length of term. Vacancies in office shall be filled by an alternate for the unexpired term.

(3) Official members or an alternate present in the absence of his respective representative will have the right to vote. A member and his respective alternate are not to work for the same employer.

(4) Members or alternates of the board shall be compensated as provided in section 59-509(a), Idaho Code.

(5) The functions of the board shall be to advise and counsel with the department in the administration of the provisions of sections 22-414 through 22-436, Idaho Code.

(6) The board shall meet at the call of the chairman or the director of the Idaho department of agriculture or his designee. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the board.

(7) At the first meeting after ~~July~~ June 1, in each year, the board shall select a chairman. The director of the Idaho department of agriculture and the ~~bureau chief manager~~ of the Idaho state seed laboratory in the department of agriculture or their representatives, shall be ex officio members without the right to vote.

SECTION 2. That Section 22-436, Idaho Code, be, and the same is hereby amended to read as follows:

22-436. SEED ARBITRATION. (1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of any seed for planting

to produce or perform as represented by the required label to be attached to such seed under section 22-415, Idaho Code, or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a legal action against the dealer or any other seller of such seed, the buyer shall first submit the claim to arbitration as provided in this section. The monetary value of the claim must exceed three thousand dollars (\$3,000). Any applicable period of limitations with respect to such claim shall be tolled until ten (10) days after the filing of the report of arbitration with the director of the department of agriculture as provided in subsection (5) (i) of this section.

(2) Notice of arbitration requirement. Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or package. Arbitration shall not be required unless this notice is included. A notice in the following form, or equivalent language, shall be sufficient:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint along with the filing fee with the Idaho Department of Agriculture within such time as to permit inspection of the crops, plants or trees. The buyer shall notify and serve a copy of the complaint upon the seller by certified mail.

(3) Effect of arbitration.

(a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

(b) Commencement of legal action. In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.

(c) Use as evidence. In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the report of arbitration as evidence of the findings of the report, and the court may give such weight to the arbitration council's findings and recommendations as to damages and costs, as the court may see fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council with respect to the failure of any party to cooperate in the arbitration proceedings including, any finding as to the effect of delay in filing the arbitration claim upon the arbitration council's ability to determine the facts of the case.

(4) Establishment of sSeed arbitration council. The director of the department of agriculture shall appoint an arbitration council composed of six (6) members and five (5) alternate members. An Idaho department of agriculture representative and an alternate shall serve as permanent members. One (1) member and one (1) alternate shall be appointed upon the recommendation of each of the following Each of the following individuals or organizations may provide a nomination list of five (5) names to the director. From the nomination lists, the director shall comprise a list consisting of fifteen (15) names from which three (3) members of the arbitration council shall be selected pursuant to the provisions of subsection (5) (c) of this section:

(a) The associate dean of the college of agriculture; director of the Idaho agricultural experiment stations, college of agriculture, university of Idaho.

(b) The department head of plant, soil and entomological sciences, college of agriculture, university of Idaho.

(c) The president of Idaho-eastern Oregon seed association.

(d) The president of the Idaho crop improvement association.

(e) The president of the Idaho farm bureau.

~~Initially, three (3) members and their alternates shall be appointed for four (4) year terms and three (3) members and their alternates shall be appointed for two (2) year terms. Thereafter, members and alternates shall be appointed for four (4) year terms.~~

~~Each alternate member shall serve only in the absence of the member for whom the person is an alternate. No member or alternate shall be involved in an investigation of a complaint if he, his employer or employee is named in the filed complaint.~~

~~Either the buyer or the seller may challenge any member or alternate of the council if there is reason to believe that a conflict of interest exists. In the event that a member or alternate is challenged, the director of the department of agriculture shall appoint, with the consent of the buyer and seller, a replacement, who shall be knowledgeable about agricultural husbandry.~~

~~The council shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the council as the chairman may direct.~~

~~The purpose of the council is to conduct arbitration as provided in this section. The council may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director or such chairman in accordance with this section.~~

(5) Procedures.

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a filing fee of one hundred dollars (\$100) which is nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified mail within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives, and by the dealer or seller from whom the seed was purchased. If the seeds are not planted, the buyer shall serve a copy of the complaint upon the seller by certified mail not later than two (2) years after the purchase of the seed lot.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration council. ~~The director shall refer the complaint and answer to the council for investigation, findings and recommendation~~ The complaint and answer shall be referred to a five (5) person arbitration council. Each party shall select one (1) arbitrator from the director's list of nominees established under the provisions of subsection (4) of this section. Those arbitrators shall select a third arbitrator from the director's list of nominees. A representative of the Idaho department of agriculture shall be the fourth arbitrator and a representative from the university of Idaho agricultural extension service shall be the fifth arbitrator. The five (5) member council shall select a chairman from its membership. The chairman shall conduct deliberations of the council and direct all of its other activities. Upon request by the chairman, the department may provide administrative support to the arbitration council.

(d) Investigation. Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director

within sixty (60) days of such referral or such later date as parties may determine.

(e) Scope of report. The report of the council shall include findings and recommendations as to investigation costs, if any, for settlement of a complaint.

(f) Authority of council. In the course of its investigation, the council or any of its members may:

(i) Examine the buyer and the seller on all matters which the council considers relevant.

(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.

(iii) Submit seed samples for testing by state seed laboratory or appropriate laboratory.

(iv) Hold informal hearings at such time and place as the chairman may direct upon reasonable notice to all parties.

(v) Upon the chairman's request, call any person in for comments knowledgeable on any matter under investigation.

(vi) Assess the cost of conducting the investigation to the non-prevailing party or between the parties of a given complaint when deemed appropriate.

(vii) Include as the cost of investigation: travel, lodging and meals as established by the state, for any witness called by the council, and other administrative and secretarial expenses.

(g) Delegation. The council may delegate all or any part of any investigation to one (1) or more of its members. Any such delegated investigation shall be summarized in writing and considered by the council in its report.

(h) Compensation. The members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

(i) Distribution of report. After the council has made its report the director shall promptly transmit the report by certified mail to all parties.

Approved March 23, 2009.

CHAPTER 39
(H.B. No. 37)

AN ACT

RELATING TO BONDED WAREHOUSES; AMENDING SECTION 69-262, IDAHO CODE, TO PROVIDE THAT THE COMMODITY INDEMNITY FUND SHALL NOT BE LIABLE FOR CLAIMS THAT RESULT FROM LOSSES DUE TO UNINSURABLE PHYSICAL PERILS; AND AMENDING SECTION 69-264, IDAHO CODE, TO PROVIDE THAT THE COMMODITY INDEMNITY FUND SHALL NOT BE LIABLE FOR UNPAID AMOUNTS FOR CERTAIN CLAIMS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 69-262, Idaho Code, be, and the same is hereby amended to read as follows:

69-262. PROOF OF CLAIMS -- PROCEDURE -- HEARING -- INSPECTION OF WAREHOUSE. In the event a warehouse or dealer fails, as defined in section 69-202(8), Idaho Code, the department shall process the claims of producers who have paid or owe assessments as required by this chapter. Claims against a failed warehouse or dealer shall include written evidence disclosing a storage obligation or a sale or delivery of commodities.

(1) The department shall give notice and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days to producers

to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and shall notify each claimant, the warehouseman or dealer, and the advisory committee of the department's determination as to the validity and amount of each claimant's claim. A claimant or warehouseman or dealer may request a hearing on the department's determination within twenty (20) days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 52, title 67, Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the commodity indemnity fund. Prior to any payment from the fund to a claimant, the claimant shall be required to subrogate and assign his right to recover from any other source. The department may then pay up to ninety percent (90%) of the approved claim to the claimant. The department shall have a priority claim for that amount. The claimant shall be entitled to seek recovery of the remaining ten percent (10%) which was not originally assigned to the department. For the purpose of determining the amount of the producer's claim, the value of a producer's commodity shall be the lesser of: (a) the value of the commodity on the date the director declared the warehouse or dealer to have failed or to have failed to comply with the provisions of this chapter or rules promulgated thereunder; (b) the contract price as listed on a valid contract; or (c) the value of the commodity represented on the contract on the date the contract was signed. The value shall be determined by a survey of the available market price reports or markets of similar facilities within the same geographic location as the failed facility.

(3) The department may inspect and audit a failed warehouseman or dealer. In the event of a shortage, the department shall determine each producer's pro rata share of available commodities and the deficiency shall be considered as a claim of the producer. Each type of commodity shall be treated separately for the purpose of determining shortages.

(4) The director shall not approve or pay any claim made on the commodity indemnity fund if the claim is based on losses resulting from the deposit, sale or storage of commodities in an unlicensed warehouse or dealer.

(5) The fund shall not be liable for claims filed against a warehouse or dealer in good standing who has voluntarily relinquished their license if such claims are not filed with the department within six (6) months of the closing.

(6) The fund shall not be liable for claims that result from losses due to uninsurable physical perils.

SECTION 2. That Section 69-264, Idaho Code, be, and the same is hereby amended to read as follows:

69-264. MINIMUM BALANCE -- SUBSEQUENT PAYMENTS. The minimum balance in the commodity indemnity fund, which shall be used exclusively for purposes of paying claimants pursuant to this chapter and chapter 5, title 69, Idaho Code, shall be two hundred fifty thousand dollars (\$250,000). At no time shall the balance be allowed to fall below the minimum balance. The director may pay claims, on a pro rata basis if necessary, until the minimum balance is reached. If the director cannot fully pay a claim before the minimum balance is reached, he shall, when the commodity indemnity fund contains sufficient funds, pay off the claim. After three (3) years from the date a claim is approved, the fund shall not be liable for any unpaid amounts.

Approved March 23, 2009.

CHAPTER 40
(H.B. No. 51)

AN ACT

RELATING TO INCOME TAXATION; AMENDING SECTION 63-3022J, IDAHO CODE, TO PROVIDE A STATE INCOME TAX DEDUCTION FOR DONATIONS OF TECHNOLOGICAL EQUIPMENT TO PRIVATE ELEMENTARY OR PRIVATE SECONDARY SCHOOLS AND TO DEFINE "PRIVATE ELEMENTARY OR PRIVATE SECONDARY SCHOOL"; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3022J, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022J. DEDUCTION OF VALUE FOR TECHNOLOGICAL EQUIPMENT. (1) For taxable years commencing on and after January 1, 1985, any individual or corporation may deduct from taxable income an amount equal to the fair market value of technological equipment donated to public elementary or public secondary schools, private elementary or private secondary schools, public universities, private universities, public colleges, private colleges, public community colleges, private community colleges, public technical colleges or private technical colleges, or public libraries and library districts located within the state of Idaho, except that the amount of the deduction shall not reduce Idaho taxable income to less than zero. The deduction allowed pursuant to this section shall be in addition to any other deduction allowed pursuant to this chapter. In order to take the deduction pursuant to this section, the taxpayer shall receive a written statement from the donee in which the donee agrees to accept the technological equipment donated.

(2) For the purposes of this section, "technological equipment" means a computer, computer software, scientific equipment or apparatus to be used by the university, college, community college, technical college, school or library directly or indirectly in the education program of the university, college, community college, technical college, school or library and which is donated to the university, college, community college, technical college, school or library no later than five (5) years after its manufacture has been substantially completed.

(3) For the purposes of this section, a public elementary or public secondary school means one that is located within this state and receives funding pursuant to chapter 10, title 33, Idaho Code.

(4) For purposes of this section, a private elementary or private secondary school means one that is located within this state and is operated on a nonprofit basis.

(5) For the purposes of this section, a public library or library district means one that is located within this state and receives funding pursuant to chapters 26 and 27, title 33, Idaho Code.

(56) For purposes of this section, a public university, public college, public community college or public technical college means one that is located within this state and receives an appropriation from the legislature.

(67) For purposes of this section, a private university, private college, private community college or private technical college means one that is located within this state and is operated on a nonprofit basis.

(78) The state tax commission shall promulgate rules to administer the provisions of this section. The rules shall be promulgated in compliance with chapter 52, title 67, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2009.

Approved March 23, 2009.

CHAPTER 41

(H.B. No. 79, As Amended in the Senate)

AN ACT

RELATING TO CHARTER SCHOOL ADMISSIONS; AMENDING SECTION 33-5205, IDAHO CODE, TO PROVIDE CHARTER SCHOOLS WITH THE OPTION OF AWARDING AN ENHANCED ENROLLMENT OPPORTUNITY TO THE CHILDREN OF CERTAIN EMPLOYEES AND CERTAIN RETURNING STUDENTS AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-5205, Idaho Code, be, and the same is hereby amended to read as follows:

33-5205. PETITION TO ESTABLISH PUBLIC CHARTER SCHOOL. (1) Any group of persons may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school.

(a) A petition to establish a new public charter school, including a public virtual charter school, shall be signed by not fewer than thirty (30) qualified electors of the attendance area designated in the petition. Proof of elector qualifications shall be provided with the petition.

(b) A petition to establish a new public virtual school must be submitted directly to the public charter school commission. A petition to establish a new public charter school, other than a new public virtual school, shall first be submitted to the local board of trustees in which the public charter school will be located. A petition shall be considered to be received by an authorized chartering entity as of the next scheduled meeting of the authorized chartering entity after submission of the petition.

(c) The board of trustees may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter; or (iii) refer the petition to the public charter school commission, but such referral shall not be made until the local board has documented its due diligence in considering the petition. Such documentation shall be submitted with the petition to the public charter school commission. If the petitioners and the local board of trustees have not reached mutual agreement on the provisions of the charter, after a reasonable and good faith effort, within sixty (60) days from the date the charter petition is received, the petitioners may withdraw their petition from the local board of trustees and may submit their charter petition to the public charter school commission, provided it is signed by thirty (30) qualified electors as required by subsection (1) (a) of this section. Documentation of the reasonable and good faith effort between the petitioners and the local board of trustees must be submitted with the petition to the public charter school commission.

(d) The public charter school commission may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter.

(e) A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by

not fewer than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not fewer than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(2) Not later than sixty (60) days after receiving a petition signed by thirty (30) qualified electors as required by subsection (1) (a) of this section, the authorized chartering entity shall hold a public hearing for the purpose of discussing the provisions of the charter, at which time the authorized chartering entity shall consider the merits of the petition and the level of employee and parental support for the petition. In the case of a petition submitted to the public charter school commission, such public hearing must be not later than sixty (60) days after receipt of the petition, which may be extended to ninety (90) days if both parties agree to an extension, and the public hearing shall also include any oral or written comments that an authorized representative of the school district in which the proposed public charter school would be physically located may provide regarding the merits of the petition and any potential impacts on the school district. Following review of the petition and the public hearing, the authorized chartering entity shall either approve or deny the charter within sixty (60) days after the date of the public hearing, provided however, that the date may be extended by an additional sixty (60) days if the petition fails to contain all of the information required in this section, or if both parties agree to the extension. This public hearing shall be an opportunity for public participation and oral presentation by the public. This hearing is not a contested case hearing as described in chapter 52, title 67, Idaho Code.

(3) An authorized chartering entity may approve a charter under the provisions of this chapter only if it determines that the petition contains the requisite signatures, the information required by subsections (4) and (5) of this section, and additional statements describing all of the following:

(a) The proposed educational program of the public charter school, designed among other things, to identify what it means to be an "educated person" in the twenty-first century, and how learning best occurs. The goals identified in the program shall include how all educational thoroughness standards as defined in section 33-1612, Idaho Code, shall be fulfilled.

(b) The measurable student educational standards identified for use by the public charter school. "Student educational standards" for the purpose of this chapter means the extent to which all students of the public charter school demonstrate they have attained the skills and knowledge specified as goals in the school's educational program.

(c) The method by which student progress in meeting those student educational standards is to be measured.

(d) A provision by which students of the public charter school will be tested with the same standardized tests as other Idaho public school students.

(e) A provision which ensures that the public charter school shall be state accredited as provided by rule of the state board of education.

(f) The governance structure of the public charter school including, but not limited to, the person or entity who shall be legally accountable for the operation of the public charter school, and the process to be followed by the public charter school to ensure parental involvement.

(g) The qualifications to be met by individuals employed by the public charter school. Instructional staff shall be certified teachers as provided by rule of the state board of education.

(h) The procedures that the public charter school will follow to ensure the health and safety of students and staff.

(i) A plan for the requirements of section 33-205, Idaho Code, for the denial of school attendance to any student who is an habitual truant, as defined in section 33-206, Idaho Code, or who is incorrigible, or whose conduct, in the judgment of the board of directors of the public charter school, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public charter school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state.

(j) Admission procedures, including provision for overenrollment. Such admission procedures shall provide that the initial admission procedures for a new public charter school, including provision for overenrollment, will be determined by lottery or other random method, except as otherwise provided herein. If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; and third, an equitable selection process such as by lottery or other random method. If so stated in its petition, a new public charter school may include the children of full-time employees of the public charter school within the first priority group subject to the limitations therein. Otherwise, such children shall be included in the third priority group. If capacity is insufficient to enroll all pupils for subsequent school terms, who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; and fourth, an equitable selection process such as by lottery or other random method. There shall be no carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies which become available. If so stated in its petition, a public charter school may include the following children within the second priority group subject to the limitations therein:

(i) The children of full-time employees of the public charter school;

(ii) Children who previously attended the public charter school within the previous three (3) school years, but who withdrew as a result of the relocation of a parent or guardian due to an academic sabbatical, employer or military transfer or reassignment.

Otherwise, such children shall be included in the fourth priority group.

(k) The manner in which an annual audit of the financial and programmatic operations of the public charter school is to be conducted.

(l) The disciplinary procedures that the public charter school will utilize, including the procedure by which students may be suspended, expelled and reenrolled, and the procedures required by section 33-210, Idaho Code.

(m) A provision which ensures that all staff members of the public charter school will be covered by the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance, and health insurance.

(n) The public school attendance alternative for students residing within the school district who choose not to attend the public charter school.

(o) A description of the transfer rights of any employee choosing to work in a public charter school that is approved by the board of trustees of a school district, and the rights of such employees to return to any noncharter school in the same school district after employment at such charter school.

(p) A provision which ensures that the staff of the public charter school shall be considered a separate unit for purposes of collective bargaining.

(q) The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act, including disciplinary procedures for these students.

(r) A plan for working with parents who have students who are dually enrolled pursuant to section 33-203, Idaho Code.

(s) The process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school.

(t) A proposal for transportation services as required by section 33-5208(4), Idaho Code.

(u) A plan for termination of the charter by the board of directors, to include:

(i) Identification of who is responsible for dissolution of the charter school;

(ii) A description of how payment to creditors will be handled;

(iii) A procedure for transferring all records of students with notice to parents of how to request a transfer of student records to a specific school; and

(iv) A plan for the disposal of the public charter school's assets.

(4) The petitioner shall provide information regarding the proposed operation and potential effects of the public charter school including, but not limited to, the facilities to be utilized by the public charter school, the manner in which administrative services of the public charter school are to be provided and the potential civil liability effects upon the public charter school and upon the authorized chartering entity.

(5) At least one (1) person among a group of petitioners of a prospective public charter school shall attend a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held, and shall provide proof of attendance to workshop attendees. Such proof shall be submitted by the petitioners to an authorized chartering entity along with the charter petition.

(56) The public charter school commission may approve a charter for a public virtual school under the provisions of this chapter only if it determines that the petition contains the requirements of subsections (3) and (4) of this section and the additional statements describing the following:

(a) The learning management system by which courses will be delivered;

(b) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;

- (c) A plan for the provision of professional development specific to the public virtual school environment;
- (d) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely, frequent feedback about student progress;
- (e) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;
- (f) A plan for the provision of technical support relevant to the delivery of online courses;
- (g) The means by which the public virtual school will provide opportunity for student-to-student interaction; and
- (h) A plan for ensuring equal access to all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.

Approved March 23, 2009.

CHAPTER 42
(H.B. No. 83)

AN ACT

RELATING TO TAXATION OF PERSONAL PROPERTY; AMENDING SECTION 63-602KK, IDAHO CODE, TO REVISE THE FISCAL YEAR THAT IS USED TO CALCULATE WHEN THE EXEMPTION TAKES EFFECT AND TO PROVIDE ADDITIONAL PROCEDURES FOR APPLICATION FOR THE EXEMPTION AND RECOVERY OF THE EXEMPTION THAT WAS IMPROPERLY CLAIMED OR APPROVED; AMENDING SECTION 63-802, IDAHO CODE, TO CORRECT THE CALCULATION OF THE THREE PERCENT PROPERTY TAX BUDGET LIMITATION RELATING TO REIMBURSEMENT MONEYS FOR EXEMPT PERSONAL PROPERTY; AMENDING SECTION 63-803, IDAHO CODE, TO CORRECT THE DEFINITION OF "TAXABLE VALUE" OF PROPERTY ON THE BASE ASSESSMENT ROLL OF A REVENUE ALLOCATION AREA; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-602KK, Idaho Code, be, and the same is hereby amended to read as follows:

63-602KK. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY. (1) On and after January 1, 2009, subject to subsection (2) of this section, each taxpayer's personal property, located in the county, which is not otherwise exempt and which is not operating property, shall be exempt to the extent of one hundred thousand dollars (\$100,000). For the purposes of this section, a taxpayer includes two (2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in section 267 of the Internal Revenue Code, as defined in section 63-3004, Idaho Code.

(2) This section shall not take effect on January 1, 2009, if on September 1, 2008, the state controller certifies that the receipts to the general fund for the fiscal year ending June 30, 2008, have not exceeded receipts to the general fund from the previous fiscal year by five percent (5%) or more. This section shall take effect on January 1 of the year following the first year when the state controller certifies to the state tax commission that receipts to the general fund for the fiscal year just ended have exceeded the receipts to the general fund during the ~~previous~~ fiscal year 2008 by five percent (5%) or more.

(3) No later than the third Monday of November of each year, the county clerk of each county shall certify to the state tax commission the amount of exemption from property taxes under subsection (1) of this section, in that county for that year. The certification shall identify the property receiving tax reductions, the value of the property, the property's location, the amount of the tax levy applicable to personal property in the location, and the tax before and after the exemption allowed in subsection (1) of this section. The certification shall be in the form prescribed by the state tax commission and shall include such additional information as the commission may require by rule as needed to implement the purpose of this section. The certification shall be reviewed and if necessary, corrected by the state tax commission.

(4) (a) Subject to the limitations of this section, the state tax commission shall reimburse from the amount appropriated for personal property tax replacement in section 63-3638, Idaho Code, the county treasurer of each county for the reduction on the certification provided in subsection (3) of this section. The county treasurer shall reimburse from the amount received to each taxing district within the county an amount in proportion to the amount of reduction shown on the certification in subsection (3) of this section as corrected. The amount that would otherwise be attributable to tax revenues derived from tax levies on ~~taxable~~ personal property exempted by this section within an existing revenue allocation area as defined in section 50-2903(15), Idaho Code, ~~on or before January 1, 2009,~~ shall be paid directly by the county treasurer to such public body or agency entitled ~~therein~~ thereto, equal to the amounts that would have been distributed in accordance with the formula for such distribution set forth in section 50-2908, Idaho Code.

(b) The state tax commission shall pay one-half (1/2) of the reimbursement provided in this section no later than December 20 of each year, and the second one-half (1/2) shall be paid by no later than June 20 of the following year. The money received by the county tax collector under the provisions of this section may be considered by counties and other taxing districts and budgeted against at the same time, and in the same manner, and in the same year as revenues from taxation. The total amount paid to the county treasurers shall not exceed the amount certified to the state tax commission under subsection (3) of this section.

(c) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received from distributions pursuant to section 63-3638, Idaho Code, as property tax replacement for the taxable value of property exempt from taxation pursuant to this section shall be treated as property tax revenues.

(5) Nothing contained in this section shall affect the taxation of forest lands or forest products pursuant to chapter 17, title 63, Idaho Code, or the taxation of the net profits of mines pursuant to chapter 28, title 63, Idaho Code.

(6) A taxpayer need only make application for the exemption in this section once, as long as all of the following conditions are met:

(a) The taxpayer has received the exemption during the previous year as a result of him making a valid application as defined in this section.

(b) The amount of the exemption allowed by this section is more than the maximum value of personal property owned by the taxpayer.

(c) The taxpayer has not made purchases of personal property that would cause the aggregate value of the personal property owned by the taxpayer to exceed the maximum amount allowed as an exemption by this section.

(d) For every year the taxpayer claims the exemption, he shall sign an affidavit on a form provided by the state tax commission, reciting the averments set forth in this section. A fraudulent claim set in an affidavit shall subject the taxpayer to a fine not in excess of ten thousand

dollars (\$10,000) in addition to other penalties set forth in this chapter.

(7) Recovery of property tax exemptions allowed by this section but improperly claimed per affidavit:

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed, the county assessor shall decide whether the exemption claimed should have been allowed, and if not, notify the board of county commissioners, at which time the board may waive a recovery of the property tax and notify such taxpayer in writing.

(b) The assessment and collection of the recovery of property tax must begin within the seven (7) year period beginning on the date the assessment notice reflecting the improperly claimed exemption was required to be mailed to the taxpayer.

(c) The taxpayer may appeal to the board of tax appeals the decision by the board of county commissioners to assess the recovery of property tax within thirty (30) days of the date the county assessor sent the notice to the taxpayer pursuant to this section.

(d) For purposes of calculating the tax, the amount of the recovered property tax shall be for each year the exemption allowed by this section was improperly claimed or approved, up to a maximum of seven (7) years. The amount of the recovery of property tax shall be calculated using the product of the amount of exempted value for each year multiplied by the levy for that year plus costs, late charges and interest for each year at the rates equal to those provided for delinquent property taxes during that year. In cases of fraud, the fine set forth in subsection (6) (d) of this section shall be assessed for each annual affidavit filed.

(e) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(f) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(g) Thirty (30) days after the taxpayer is notified, as provided in subsection (7) (a) of this section, the assessor shall record a notice of intent to attach a lien. Upon the payment in full of such recovered property taxes prior to the attachment of the lien as provided in subsection (7) (h) of this section, or upon the successful appeal by the taxpayer, the county assessor shall record a rescission of the intent to attach a lien within seven (7) business days of receiving such payment or within seven (7) business days of the county commissioners' decision granting the appeal.

(h) Any unpaid recovered property taxes shall become a lien upon the taxpayer's personal property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county treasurer sent the notice to the taxpayer pursuant to this section.

(i) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

SECTION 2. That Section 63-802, Idaho Code, be, and the same is hereby amended to read as follows:

63-802. LIMITATION ON BUDGET REQUESTS -- LIMITATION ON TAX CHARGES -- EXCEPTIONS. (1) Except as provided in subsection (3) of this section for tax year 1995, and each year thereafter, no taxing district shall certify a budget request for an amount of property tax revenues to finance an annual budget that exceeds the greater of:

(a) The dollar amount of property taxes certified for its annual budget for any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, ~~plus the dollar amount of moneys received pursuant to section 63-3638(12), Idaho Code,~~ for the past tax year, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue that would have been generated by applying the levy of the previous year, not including any levy described in subsection (4) of this section, or any school district levy reduction resulting from a distribution of state funds pursuant to section 63-3638(10), Idaho Code, to any increase in market value subject to taxation resulting from new construction or change of land use classification as evidenced by the value shown on the new construction roll compiled pursuant to section 63-301A, Idaho Code; and by the value of annexation during the previous calendar year, as certified by the state tax commission for market values of operating property of public utilities and by the county assessor; or

(b) The dollar amount of property taxes certified for its annual budget during the last year in which a levy was made; or

(c) The dollar amount of the actual budget request, if the taxing district is newly created except as may be provided in subsection (1) (h) of this section; or

(d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code; or

(e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of property taxes is certified for annual budget purposes in any one (1) year, such a district may, in any following year, recover the foregone increase by certifying, in addition to any increase otherwise allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed; or

(f) In the case of cities, if the immediately preceding year's levy subject to the limitation provided by this section, is less than 0.004, the city may increase its budget by an amount not to exceed the difference between 0.004 and actual prior year's levy multiplied by the prior year's market value for assessment purposes. The additional amount must be approved by sixty percent (60%) of the voters voting on the question at an election called for that purpose and held on the date in May or November provided by law, and may be included in the annual budget of the city for purposes of this section; or

(g) A taxing district may submit to the electors within the district the question of whether the budget from property tax revenues may be increased beyond the amount authorized in this section, but not beyond the levy authorized by statute. The additional amount must be approved by sixty-six and two-thirds percent (66 2/3%) or more of the voters voting on the question at an election called for that purpose and held on the May or November dates provided by section 34-106, Idaho Code. If approved by the required minimum sixty-six and two-thirds percent (66 2/3%) of the voters voting at the election, the new budget amount shall be the base budget for the purposes of this section; or

(h) When a nonschool district consolidates with another nonschool district or dissolves and a new district performing similar governmental functions as the dissolved district forms with the same boundaries within three (3) years, the maximum amount of a budget of the district

from property tax revenues shall not be greater than the sum of the amounts that would have been authorized by this section for the district itself or for the districts that were consolidated or dissolved and incorporated into a new district; or

(i) In the instance or case of cooperative service agencies, the restrictions imposed in sections 33-315 through 33-318, Idaho Code.

(2) In the case of fire districts, during the year immediately following the election of a public utility or public utilities to consent to be provided fire protection pursuant to section 31-1425, Idaho Code, the maximum amount of property tax revenues permitted in subsection (1) of this section may be increased by an amount equal to the current year's taxable value of the consenting public utility or public utilities multiplied by that portion of the prior year's levy subject to the limitation provided by subsection (1) of this section.

(3) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(4) The amount of property tax revenues to finance an annual budget does not include revenues from nonproperty tax sources, and does not include revenue from levies that are voter approved for bonds, override levies or supplemental levies, plant facilities reserve fund levies, school emergency fund levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax year.

SECTION 3. That Section 63-803, Idaho Code, be, and the same is hereby amended to read as follows:

63-803. CERTIFICATION OF BUDGETS IN DOLLARS. (1) Whenever any taxing district is required by law to certify to any county treasurer, county auditor, county assessor, county commissioners or to any other county officer, any property tax levy, upon property located within said district, such certification shall, notwithstanding any other provision of the law applicable to any such district, be made at the time and in the manner hereinafter provided.

(2) The county auditor shall inform each of the taxing districts within his county of the taxable value of that district as soon as such value is known to the auditor, whether the value comes from the appraisal and assessment of real and personal property, or from allocation of the taxable value of operating property, or from other sources.

(3) Using the taxable value of the district, the council, trustees, board or other governing body of any taxing district shall certify the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved. The amount of money so determined shall be certified in dollars to the appropriate county commissioners. Any taxing unit, except regional airport authorities, located in more than one (1) county shall divide its dollar budget for certification to the separate counties by multiplying the amount of such budget by a fraction, the numerator of which shall be the total taxable value of all property in such taxing unit within the county to which such certification is to be made, and the denominator of which shall be the total taxable value of property in such taxing unit in all such counties. Budget certification to the participating counties of regional airport authorities shall be made in the manner prescribed in section 21-807(10),

Idaho Code. Taxable value shall be certified by the county auditor of each affected county to such taxing unit and such certification shall be used in this formula. Except as provided in section 33-805, Idaho Code, relating to school emergency fund levies, the certification to the county commissioners required in this section shall be made not later than the Thursday prior to the second Monday in September, unless, upon application therefor, the county commissioners grant an extension of not more than seven (7) working days. After receipt of this certification, the county commissioners shall make a tax levy as a percent of taxable value of all property in the taxing district, which when applied to the tax rolls, will meet the budget requirements certified by such taxing districts.

(4) Except as provided in subsection (1)(a) through (e) of section 50-2908, Idaho Code, for the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions, except the exemption for personal property in section 63-602KK, Idaho Code, and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. When the county auditor is notified of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value shall also include the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area. For each taxing district, taxable value shall include the value from the property and operating property rolls for the current year and subsequent and missed property rolls for the prior year or the best estimate of the subsequent and missed property rolls for the current year.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2009.

Approved March 23, 2009.

CHAPTER 43
(H.B. No. 102)

AN ACT

RELATING TO COUNTIES; AMENDING SECTION 31-857, IDAHO CODE, TO PROVIDE THAT CHALLENGES TO PROCEEDINGS AND JURISDICTIONAL STEPS PRECEDING ORDERS RELATING TO THE CREATION, ESTABLISHMENT, DISESTABLISHMENT, DISSOLUTION OR MODIFICATION OF CERTAIN DISTRICTS SHALL NOT BE HEARD OR CONSIDERED FOLLOWING THE LAPSE OF A SPECIFIED PERIOD OF TIME.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-857, Idaho Code, be, and the same is hereby amended to read as follows:

31-857. SCHOOL, ROAD, HERD AND OTHER DISTRICTS -- PRESUMPTION OF VALIDITY OF CREATION OR DISSOLUTION. Whenever any school district, road district, herd district, or other district has heretofore been, or shall hereafter be, declared to be created, established, disestablished, dissolved, or modified, by an order of the board of county commissioners in any county of the state of Idaho, a legal prima facie presumption is hereby declared to exist, after a lapse of two (2) years from the date of such order, that all proceedings and jurisdictional steps preceding the making of such order have been properly and regularly taken so as to warrant said board in mak-

ing said order, and the burden of proof shall rest upon the party who shall deny, dispute, or question the validity of said order to show that any of such preceding proceedings or jurisdictional steps were not properly or regularly taken; and such prima facie presumption shall be a rule of evidence in all courts in the state of Idaho. No challenge to the proceedings or jurisdictional steps preceding such an order, shall be heard or considered after seven (7) years has lapsed from the date of the order.

Approved March 23, 2009.

CHAPTER 44

(H.B. No. 132, As Amended in the Senate)

AN ACT

RELATING TO MILITARY DUTY; AMENDING SECTION 46-216, IDAHO CODE, TO PROVIDE FOR AN ADJUSTMENT TO MILITARY LEAVE ENTITLEMENT FOR STATE EMPLOYEES ASSIGNED TO UNCOMMON TOURS OF DUTY AND TO PROVIDE THAT ADMINISTRATION OF PAID LEAVE FOR UNCOMMON TOURS OF DUTY SHALL BE CONSISTENT WITH CERTAIN FEDERAL PROVISIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 46-216, Idaho Code, be, and the same is hereby amended to read as follows:

46-216. LEAVE OF ABSENCE FROM REGULAR DUTIES FOR MILITARY DUTY. All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States, shall be entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, time, or efficiency rating during which they shall be engaged in military duty ordered or authorized under the provisions of law. State employees assigned to "uncommon tours of duty" shall have the above-referenced one hundred twenty (120) hours of leave prorated proportionally to the number of hours in their regularly scheduled biweekly pay period. Administration of paid leave for "uncommon tours of duty" shall be consistent with the federal office of personnel management (OPM) definitions and pay administration guidance for similarly situated federal employees.

Approved March 23, 2009.

CHAPTER 45

(S.B. No. 1056, As Amended)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTIONS; AMENDING CHAPTER 2, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-209G, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE THE DIRECTOR OF CORRECTION WITH CERTAIN AUTHORITY AND TO PROVIDE PROCEDURES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-209G, Idaho Code, and to read as follows:

20-209G. AUTHORITY TO INVESTIGATE AND ISSUE SUBPOENAS. (1) For purposes of this section, the following definitions shall apply:

(a) "Correctional facility" means any prison, correctional facility or mental health facility operated by the department of correction and any public or private correctional facility in which department of correction prisoners are housed pursuant to contract, including a county jail;

(b) "Department of correction prisoner" means any person housed in a correctional facility who has been committed to the custody of or who is under the supervision of the department of correction by way of a judgment of conviction or court order, including the following:

(i) Prisoners committed to the department to serve criminal sentences;

(ii) Persons committed in relation to their fitness to proceed at trial pursuant to section 18-212, Idaho Code;

(iii) Prisoners over whom a court has retained jurisdiction pursuant to section 19-2601 4., Idaho Code;

(iv) Prisoners serving discretionary jail time as probationers or parolees;

(v) Parolees arrested pursuant to sections 20-227 and 20-228, Idaho Code, and are awaiting a determination regarding violation or revocation of their parole;

(vi) Civil commitments pursuant to section 66-329, Idaho Code; and

(vii) Persons committed to the Idaho security medical program pursuant to section 66-1301, Idaho Code.

(c) "Documents" means any writings, charts, records, recordings, electronic records or data, photographs, tangible things, drawings or diagrams of any sort whatsoever.

(2) In furtherance of the duties set forth in this chapter and department of correction rules, the director of correction shall have the authority to:

(a) Investigate crimes, criminal enterprises or conspiracies, violations of state law or administrative regulations, disturbances, riots and the introduction of contraband into a correctional facility, where such activities involve department of correction prisoners;

(b) Investigate waste, mismanagement of state resources and violations of laws, regulations, policies, directives or procedures by employees of the department of correction; and

(c) Issue subpoenas for the production of documents which may be relevant to such investigations.

(3) If a custodian of documents refuses to produce any document required by a subpoena issued pursuant to subsection (2) of this section, the director of correction may petition the district court in the county in which the custodian resides or does business, setting forth by way of sworn affidavit the reasons supporting issuance of the subpoena and why the documents sought are necessary for the investigation, that due notice has been given of the time and place of production of said documents, that the custodian has been properly summoned and that the custodian has failed and refused to produce documents required by the subpoena and may request an order compelling the custodian to produce the documents.

(4) Upon the filing of such petition and affidavit, the court shall enter an order directing the custodian of documents to appear before the court at a time fixed by the court, but not more than ten (10) court days from the date of the order, and to show cause why the custodian has not produced the documents and why he should not be required to produce the documents. The court shall serve a copy of the order upon the custodian. If it appears to the court that the petition is adequately supported by affidavit, the subpoena was regularly issued by the director of correction and regularly served upon

the custodian, and that there is not good cause for the custodian's failure to produce the documents, the court shall order the custodian to produce the required documents at a time and place fixed by the court. If the custodian fails to obey the court's order, he shall be dealt with for contempt of court.

(5) When documents are sought from a custodian who is not a resident of this state or who has his principal place of business in another state, the director of correction is authorized to obtain subpoenas issued by the clerk of the district court of Ada county. The clerk of the district court shall open a court file, provide a case number and issue the subpoena under the seal of the court. The subpoena shall specify those documents required to be produced.

(6) The department of correction shall cooperate with local law enforcement and other local, state or federal law enforcement agencies during the conduct of any investigation arising out of the powers and duties set forth in this section.

Approved March 23, 2009.

CHAPTER 46
(S.B. No. 1070)

AN ACT

RELATING TO BEEF CATTLE ANIMAL FEEDING OPERATIONS; AMENDING CHAPTER 49, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-4909A, IDAHO CODE, TO PROVIDE FOR THE EFFECT OF FEDERAL ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT ACTIONS ON ADMINISTRATIVE OR CIVIL ENFORCEMENT ACTIONS INITIATED BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND TO PROVIDE FOR THE EFFECT OF FEDERAL ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT ACTIONS ON CERTAIN ORDERS ISSUED BY THE DIRECTOR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 49, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-4909A, Idaho Code, and to read as follows:

22-4909A. EFFECT OF FEDERAL ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT ACTION. In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged noncompliance at a beef cattle animal feeding operation, any pending administrative or civil enforcement action initiated by the director regarding the same alleged noncompliance shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect.

Approved March 23, 2009.

CHAPTER 47
(S.B. No. 1073)

AN ACT

RELATING TO COSMETICIANS; AMENDING SECTION 54-803, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-827, IDAHO CODE, TO REVISE A PROVISION RELATING TO A PERMIT TO PRACTICE, DEMONSTRATE OR TEACH COSMETOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-803, Idaho Code, be, and the same is hereby amended to read as follows:

54-803. REGULATION OF COSMETOLOGICAL ESTABLISHMENTS. Every establishment licensed under the provisions of this chapter shall meet the following requirements:

~~(1-)~~ It shall be unlawful to practice any of the occupations licensed under this chapter except in a place or establishment licensed therefor, or licensed under the provisions of chapter 5, title 54, Idaho Code.

~~(2-)~~ It shall be unlawful for any person to employ, or to allow to be employed, in or about an establishment licensed under the provisions of this chapter, any person not duly licensed under the provisions of this chapter except a registered barber holding a valid, unrevoked license practicing barbering.

~~(3-)~~ Where a licensed cosmetological establishment is located in or as a part of a home or other building containing living quarters, the portions thereof which are used for the licensed practice of cosmetology shall not be used as living, dining, or sleeping quarters.

SECTION 2. That Section 54-827, Idaho Code, be, and the same is hereby amended to read as follows:

54-827. PERMIT TO PRACTICE, DEMONSTRATE OR TEACH COSMETOLOGY. (1) Upon application~~7~~ and payment of the required fee, the board or its designated agent shall grant a temporary permit authorizing a person to practice, demonstrate or teach cosmetology, or perform any one (1) or more of such functions in the following instances:

(a) When such permit is sought primarily for educational or demonstration purposes and the person making application therefore is licensed or qualified through proper documentation to practice or teach cosmetology in this or any other state, territory, possession of the United States or foreign country, and presents satisfactory evidence of that fact. When a permit is issued for this purpose, it shall specify the time and place when and where such educational demonstrations shall take place, and the permit shall be limited to such time and place, and in no instance shall said permit be for a period in excess of thirty (30) days.

(b) When a permit is requested for educational or demonstration purposes by a licensed school on behalf of its students currently enrolled or a licensed cosmetologist on behalf of an apprentice. When a permit is issued for this purpose, it shall specify ~~those students or apprentices eligible to participate and~~ the time and place of the education demonstration~~7 and the permit shall be limited to those individuals and time and place.~~ In no instance shall the permit be for a period in excess of seven (7) days.

(c) When a permit is requested for practice by a person licensed under this chapter, by a licensed school on behalf of its students currently enrolled or by a licensed cosmetologist on behalf of an apprentice. When a permit is issued for this purpose, the permit holder shall observe and comply with the inspection and sanitation requirements established by board rule. The permit shall specify the location and date of practice and shall not exceed thirty (30) days. Members of the public may not be charged for any services performed in connection with a permit granted pursuant to this subsection.

(2) Facilities or locations used for cosmetological services pursuant to a permit obtained under ~~subsection (1) (a) or (1) (b)~~ of this section shall be exempt from the requirements for licensed establishments set forth in section 54-803~~(1-)~~, Idaho Code. However, the facility or location and

permit holder shall observe and comply with the inspection and sanitation requirements established by board rule.

Approved March 23, 2009.

CHAPTER 48
(S.B. No. 1075)

AN ACT

RELATING TO INDUSTRIAL COMMISSION; AMENDING SECTION 72-517, IDAHO CODE, TO REVISE THE COMMISSION'S AUTHORITY TO ENTER INTO CERTAIN COOPERATIVE AGREEMENTS WITH OTHER AGENCIES AND TO LIMIT THE INFORMATION PROVIDED TO OTHER AGENCIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-517, Idaho Code, be, and the same is hereby amended to read as follows:

72-517. COOPERATION WITH OTHER AGENCIES. The commission shall have the authority to enter into cooperative agreements with ~~the director of the department of labor, the administrator of the division of building safety, the director of the department of health and welfare, state board of education, state board for professional technical education, state nuclear energy commission, and with other state agencies and with their successors,~~ and with federal and private agencies, to share information with those agencies and to cooperate with programs sponsored by all such agencies to facilitate the carrying out of the purposes of this law. Information provided shall be limited to the following:

- (1) Individuals and entities operating the business.
- (2) Business name.
- (3) Mailing address.
- (4) Physical location of the business.
- (5) Dates of alleged violation of section 72-301, Idaho Code.
- (6) Workers performing service for the business.
- (7) Contact person.
- (8) Telephone number of the contact person.

Approved March 23, 2009.

CHAPTER 49
(S.B. No. 1080)

AN ACT

RELATING TO REAL ESTATE INVESTMENTS; AMENDING SECTION 41-728, IDAHO CODE, TO DELETE PROVISIONS THAT SPECIFY THE MAXIMUM AGGREGATE AMOUNT OF REAL ESTATE THAT MAY BE INVESTED BY CERTAIN INSURERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-728, Idaho Code, be, and the same is hereby amended to read as follows:

41-728. REAL ESTATE. (1) An insurer may acquire, invest in, own, maintain, alter, furnish, improve, manage, lease and convey the following real estate only:

(a) Land and buildings used for home office purposes, together with such other real estate as is required for its accommodation in the convenient transaction of its business.

(b) Real estate acquired in satisfaction in full or in part of or through foreclosure of or judgment obtained upon, loans, mortgages, liens or other evidences of indebtedness previously owing to the insurer in the regular course of its business.

(c) Real estate acquired in part payment of the consideration in the sale of other real estate owned by the insurer.

(d) Real estate acquired by gift or devise.

(e) Real estate acquired through a lawful merger or consolidation of another insurer and not required for its accommodation as provided in paragraph (a) of this subsection.

(f) Real estate for the production of income, under lease, or being constructed under a definite agreement providing for lease, to solvent institutions for commercial or industrial purposes, other than primarily for agricultural, horticultural, ranch, mining, mineral, oil, recreational, amusement, club, motel, or hotel purposes.

(g) Real estate subject to a plan of development other than primarily for agricultural, horticultural, ranch, mining, mineral, oil, recreational, amusement, club, motel, or hotel purposes as limited by subsection (2) (c) of this section.

(2) The aggregate amount so invested by the insurer shall not exceed:

(a) If for home office and its other purposes pursuant to subsection (1) (a) of this section, ten percent (10%) of the insurer's assets, subject to the right of the director to approve an additional amount after hearing and for good cause shown.

(b) If for income purposes pursuant to subsection (1) (f) of this section, ten percent (10%) of the insurer's admitted assets.

(c) If for properties subject to a plan of development pursuant to subsection (1) (g) of this section, not more than five percent (5%) of its admitted assets of which not more than two percent (2%) of its admitted assets may be in any one (1) parcel or group of contiguous parcels. The director may disapprove the property as an admitted asset if the plan of development is not being pursued in good faith. Factors for review may include, but are not limited to, progress with regard to zoning, roads, utilities, plats and completed development by the insurer of properties.

(d) In all categories and for all purposes, not to exceed twenty percent (20%) of the insurer's assets.

~~(e) Notwithstanding the provisions of paragraphs (a) through (d) of this subsection, the aggregate amount invested by a domestic reciprocal insurer which is comprised of and exclusively insures members who are political subdivisions of the state, as defined in section 6-902-2, Idaho Code, shall not exceed:~~

~~(i) Twenty five percent (25%) from July 1, 2001, to June 30, 2003;~~

~~(ii) Twenty percent (20%) from July 1, 2003, to June 30, 2004; and~~

~~(iii) Fifteen percent (15%) on July 1, 2004, and each year thereafter.~~

(3) An insurer may lease to others part of real property otherwise occupied by it for home office and other purposes under subsection (1) (a) of this section, but the value of the entire property must be included for the purposes of the limitation upon aggregate real estate investments provided in subsection (2) (a) of this section.

CHAPTER 50
(S.B. No. 1091)

AN ACT

RELATING TO URBAN RENEWAL; AMENDING SECTION 50-2908, IDAHO CODE, TO REVISE APPLICATION FOR SCHOOL LEVIES FOR SUPPLEMENTAL MAINTENANCE AND OPERATION APPROVED AFTER DECEMBER 31, 2007, FOR CALCULATING THE TAX RATE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-2908, Idaho Code, be, and the same is hereby amended to read as follows:

50-2908. DETERMINATION OF TAX LEVIES -- CREATION OF SPECIAL FUND. (1) For purposes of calculating the rate at which taxes shall be levied by or for each taxing district in which a revenue allocation area is located, the county commissioners shall, with respect to the taxable property located in such revenue allocation area, use the equalized assessed value of such taxable property as shown on the base assessment roll rather than on the current equalized assessed valuation of such taxable property, except the current equalized assessed valuation shall be used for calculating the tax rate for:

(a) Levies for refunds and credits pursuant to section 63-1305, Idaho Code, and any judgment pursuant to section 33-802(1), Idaho Code, certified after December 31, 2007;

(b) Levies permitted pursuant to section 63-802(3), Idaho Code, certified after December 31, 2007;

(c) Levies for voter approved general obligation bonds of any taxing district and plant facility reserve fund levies passed after December 31, 2007;

(d) Levies set forth in paragraphs (1) (a) through (c) of this subsection, first certified prior to December 31, 2007, when the property affected by said levies is included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or any taxing district after December 31, 2007; and

(e) School levies for supplemental maintenance and operation pursuant to section 33-802(3) and (4), Idaho Code, approved after December 31, 2007, ~~or in the case of charter school districts any supplemental levy that does not exceed two (2) years in duration.~~

(2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including the taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:

(a) To the taxing district shall be allocated and shall be paid by the county treasurer:

(i) All taxes levied by the taxing district or on its behalf on taxable property located within the taxing district but outside the revenue allocation area;

(ii) A portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area; and

(iii) All taxes levied by the taxing district to satisfy obligations specified in subsection (1) (a) through (e) of this section.

(b) To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.

(3) Upon enactment of an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency shall create a special fund or funds to be used for the purposes enumerated in this chapter. The revenues allocated to the urban renewal agency pursuant to this chapter, shall be paid to the agency by the treasurer of the county in which the revenue allocation district is located and shall be deposited by the agency into one (1) or more of such special funds. The agency may, in addition, deposit into such special fund or funds such other income, proceeds, revenues and funds it may receive from sources other than the revenues allocated to it under subsection (2) (b) of this section.

(4) For the purposes of section 63-803, Idaho Code, during the period when revenue allocation under this chapter is in effect, and solely with respect to any taxing district in which a revenue allocation area is located, the county commissioners shall, in fixing any tax levy other than the levy specified in subsection (1) (a) through (e) of this section, take into consideration the equalized assessed valuation of the taxable property situated in the revenue allocation area as shown in the base assessment roll, rather than the current equalized assessed value of such taxable property.

(5) For all other purposes, including, without limitation, for purposes of sections 33-802, 33-1002 and 63-1313, Idaho Code, reference in the Idaho Code to the term "market value for assessment purposes" (or any other such similar term) shall mean market value for assessment purposes as defined in section 63-208, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 23, 2009.

CHAPTER 51
(S.B. No. 1062)

AN ACT

RELATING TO DISPOSITION OF HUMAN REMAINS; AMENDING SECTION 54-1139, IDAHO CODE, TO APPLY CITED IDAHO CODE PROVISIONS IN THE ABSENCE OF PROVISIONS REGARDING DISPOSITION OF REMAINS IN A PREARRANGED FUNERAL PLAN AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1141, IDAHO CODE, TO PROVIDE A CODE CROSS-REFERENCE AND TO PROVIDE FOR ALTERNATE ARRANGEMENTS THAT DO NOT CONFLICT WITH THE DECEASED'S INSTRUCTIONS; AND AMENDING SECTION 54-1142, IDAHO CODE, TO PROVIDE FOR DISPOSITION OF A PERSON'S REMAINS THAT IS NOT CLEARLY COVERED IN A PREARRANGED FUNERAL PLAN.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1139, Idaho Code, be, and the same is hereby amended to read as follows:

54-1139. INSTRUCTIONS FOR DISPOSITION OF PERSON'S REMAINS. ~~A-(1)~~ A person may provide written instructions as part of a prearranged funeral plan for disposition of the person's remains by any lawful means. The person shall execute the prearranged funeral plan, containing the instructions, as provided in section 54-1133, Idaho Code.

~~B-(2)~~ As used in this section, "prearranged funeral plan" means a plan:

~~(1a)~~ For the final disposition of a person's remains; and

~~(2b)~~ That has been funded in advance of the death of the person leaving instructions for the disposition of that person's remains.

~~C-(3)~~ A person, as part of a prearranged funeral plan, shall have the authority to sign all necessary or required forms, authorizations or agreements pertaining to the disposition of his remains including, but not limited to, a cremation authorization form.

~~D-(4)~~ A person, as part of a prearranged funeral plan, may designate a person to make decisions regarding any substitutions under section 54-1137, Idaho Code.

(5) To the extent any provisions relating to the disposition of a person's remains are not clearly covered in a prearranged funeral plan, then the provisions of section 54-1142, Idaho Code, shall apply. The mere ownership of a burial plot, with or without a headstone or marker, does not constitute a prearranged funeral plan.

SECTION 2. That Section 54-1141, Idaho Code, be, and the same is hereby amended to read as follows:

54-1141. SURVIVOR'S SERVICES. The provisions of sections 54-1140 and 54-1142, Idaho Code, shall not prevent the deceased person's survivors from, at their own expense, pursuing alternate meaningful services and making arrangements for funeral services that do not conflict with the deceased's instructions for disposition.

SECTION 3. That Section 54-1142, Idaho Code, be, and the same is hereby amended to read as follows:

54-1142. AUTHORITY IN ABSENCE OF OR UNCOVERED PROVISIONS IN A PREARRANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral plan as set forth in section 54-1139, Idaho Code, or to the extent any provisions relating to the disposition of the person's remains are not clearly covered in a prearranged funeral plan, the right to control the disposition of the remains of a deceased person or to determine provisions not clearly covered in a prearranged funeral plan vests in, and devolves upon the following in the order named:

(a) The person designated in a written document executed by the decedent and acknowledged in the same manner as required for instruments conveying real property, and subject to such limitations, restrictions, or directions, as may be set forth in such document;

(b) The person designated as agent under a durable power of attorney for health care executed by the decedent, unless such durable power of attorney for health care contains express and clear language denying such right;

(c) The person designated in a durable power of attorney executed by the decedent, if such power of attorney contains express and clear language granting such right to the agent named in such power of attorney;

(d) The competent surviving spouse of the decedent;

(e) A majority of the competent surviving adult children of the decedent, provided that less than one-half (1/2) of the competent surviving adult children shall be vested with the right to control the disposition of the remains of the decedent if they have used reasonable efforts to notify all other competent surviving adult children of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all competent surviving adult children;

(f) The competent surviving parents or parent of the decedent, provided that if one (1) of the competent surviving parents is absent, the remaining competent surviving parent shall be vested with the right to

control the disposition of the remains of the decedent after reasonable efforts have been made and are unsuccessful in locating the absent competent surviving parent;

(g) The person appointed by a court of competent jurisdiction as the personal representative or administrator of the estate of the decedent;

(h) The person nominated as the personal representative of the estate of the decedent in the will of the decedent;

(i) The competent adult person or persons entitled to inherit from the decedent under the intestate succession laws of the state of Idaho, respectively in the next degree of kinship, provided that if there is more than one (1) competent surviving adult person of the same degree of kinship, the majority of those persons, and provided further that less than the majority of competent surviving adult persons of the same degree of kinship shall be vested with the right to control the disposition of the remains of the decedent if those persons have used reasonable efforts to notify all other competent surviving adult persons of the same degree of kinship of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of one-half (1/2) or more of all competent surviving adult persons of the same degree of kinship;

(j) If the persons listed above fail to exercise their right to dispose of the remains of the deceased person within forty (40) days of the death of the deceased person, the person acting as guardian of the ward at the time of the ward's death, or if no guardian was then acting, the person acting as conservator of the protected person at the time of the protected person's death, has the authority to dispose of the deceased person's remains, including cremation of the remains.

(2) If any person to whom the right of control has vested pursuant to the foregoing has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next qualifying person as listed above as if the charged person did not exist; provided however, that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of control is returned to the person.

(3) For purposes of this section:

(a) "Adult" means an individual who is eighteen (18) years of age or older;

(b) "Child" means a natural or adopted child of the decedent;

(c) "Competent" means the individual has not been declared incompetent by a court of law, or who has been declared competent by a court of law after a prior declaration of incompetence;

(d) "Durable power of attorney" means a power of attorney described in section 15-12-102, Idaho Code, or any similar document properly executed under the laws of another jurisdiction; and

(e) "Durable power of attorney for health care" means the document described in chapter 45, title 39, Idaho Code, or any similar document properly executed under the laws of another jurisdiction;

(f) "Will" means any testamentary device which is valid under the Idaho probate code, including, but not limited to, sections 15-2-503, 15-2-504 and 15-2-506, Idaho Code, whether or not originally executed in, or under the laws of, the state of Idaho.

(4) (a) A cemetery authority or licensed funeral director or a licensed hospital or its authorized personnel may permit or assist in, and a physician may perform, an autopsy of any remains of a decedent in its custody:

(i) If the decedent, prior to his death, authorizes an autopsy in his will or in another written instrument, including, but not limited to, a durable power of attorney for health care; or

(ii) Upon the receipt of a written authorization signed by, telegraphed from, or received by facsimile transmission from, a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer; or

(iii) Upon the receipt of an oral authorization obtained by telephone, and recorded on tape or other recording device, from a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer.

(b) A cemetery authority or a licensed funeral director of a licensed hospital or its authorized personnel is not liable for permitting or assisting, and a physician is not liable for performing, an autopsy pursuant to the authorization provided in paragraph (a) of this subsection unless he has actual notice that such representation is untrue at the time the autopsy is performed. If such authorization is contained in a will, the autopsy may be performed regardless of the validity of the will in other respects and regardless of whether the will may not be offered for, or admitted to, probate until a later date.

(c) This subsection shall not authorize the obtaining of an oral authorization by telephone, recorded on tape or other recording device, for the autopsy of a deceased person if it is made known to the physician who is to perform the autopsy that the deceased person was, at the time of his death, a member of a religion or group which opposes autopsies.

Approved March 23, 2009.

CHAPTER 52
(S.B. No. 1043)

AN ACT

RELATING TO THE LEGISLATURE; REPEALING SECTIONS 67-201, 67-202, 67-406c, 67-412, 67-434 AND 67-436, IDAHO CODE, RELATING TO ARCHAIC STATUTES DEALING WITH THE LEGISLATURE AND WITH LEGISLATIVE APPORTIONMENT; REPEALING CHAPTER 7, TITLE 67, IDAHO CODE, RELATING TO THE LEGISLATIVE COUNSEL; AMENDING SECTION 67-401, IDAHO CODE, TO DELETE REFERENCE TO AN ARCHAIC METHOD OF LEGISLATIVE APPORTIONMENT; AMENDING SECTION 67-406, IDAHO CODE, TO DELETE ARCHAIC LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 67-428, IDAHO CODE, TO PROVIDE FOR AN APPOINTMENT OF A DIRECTOR OF LEGISLATIVE SERVICES TO SERVE AT THE PLEASURE OF THE COUNCIL AND TO DELETE REFERENCE TO EMPLOYEES OF THE COUNCIL; AMENDING SECTION 67-429, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE LEGISLATIVE COUNCIL; AMENDING SECTION 67-431, IDAHO CODE, TO DELETE ARCHAIC LANGUAGE AND TO PROVIDE A CORRECT REFERENCE TO LEGISLATIVE COMPENSATION; AMENDING SECTION 67-435, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE JOINT FINANCE-APPROPRIATIONS COMMITTEE; AMENDING SECTION 67-450B, IDAHO CODE, TO REVISE REQUIREMENTS OF INDEPENDENT FINANCIAL AUDITS AND FILING REQUIREMENTS OF SUCH AUDITS BY GOVERNMENTAL ENTITIES; AMENDING SECTION 67-450C, IDAHO CODE, TO REVISE REQUIREMENTS OF INDEPENDENT FINANCIAL AUDITS AND FILING REQUIREMENTS OF SUCH AUDITS OF AFFILIATED ORGANIZATIONS TO STATE GOVERNMENTAL AGENCIES OR ENTITIES; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 7, TITLE 67, IDAHO CODE, TO CREATE THE LEGISLATIVE SERVICES OFFICE, TO PROVIDE FOR THE AUDIT FUNCTION OF THE LEGISLATIVE SERVICES OFFICE, TO PROVIDE THE BUDGET AND POLICY ANALYSIS FUNCTION OF THE LEGISLATIVE SERVICE OFFICE, AND TO PROVIDE FOR THE RESEARCH AND LEGISLATION FUNCTION OF THE

LEGISLATIVE SERVICES OFFICE; AMENDING SECTION 72-1507, IDAHO CODE, TO DELETE REFERENCE TO THE LEGISLATIVE COUNCIL BEING DIRECTED TO FURNISH SECRETARIAL AND OTHER STAFF ASSISTANCE THAT THE REAPPORTIONMENT COMMISSION MAY REQUIRE IN THE PERFORMANCE OF ITS DUTIES; AND AMENDING SECTION 34-301, IDAHO CODE, TO DELETE AN OBSOLETE CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 67-201, 67-202, 67-406c, 67-412, 67-434 and 67-436, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Chapter 7, Title 67, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 67-401, Idaho Code, be, and the same is hereby amended to read as follows:

67-401. CONSTITUTION OF LEGISLATURE. The legislature consists of a senate and house of representatives, the members of which are elected from the respective senatorial and representative districts, ~~as defined by chapter 2 of this title,~~ by the qualified electors of said districts.

SECTION 4. That Section 67-406, Idaho Code, be, and the same is hereby amended to read as follows:

67-406. COMPENSATION AND MILEAGE OF MEMBERS OF LEGISLATURE. Each member of the legislature shall receive for his services ~~the sum of ten dollars (\$10.00) per day from the commencement of each regular session, but such pay shall not exceed for each member, except the presiding officers, in the aggregate \$600.00 for per diem allowance for any one (1) session; and shall receive each the sum of ten cents (10¢) per mile each way by the usual traveled route.~~

~~When convened in extra session by the governor, they shall each receive ten dollars (\$10.00) per day; but no extra session shall continue for a longer period than twenty (20) days. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the legislature shall each, in virtue of his office, receive an additional compensation equal to one-half (1/2) his per diem allowance as a member; provided, that whenever any member of the legislature shall travel on a free pass in coming to or returning from the legislature the number of miles actually traveled on such pass shall be deducted from the mileage of such member compensation and expenses in accordance with rates established by the citizens' committee on legislative compensation authorized in section 67-406b, Idaho Code.~~

SECTION 5. That Section 67-428, Idaho Code, be, and the same is hereby amended to read as follows:

67-428. OFFICERS OF COUNCIL -- COMMITTEES -- DIRECTOR OF LEGISLATIVE SERVICES. The council shall select a chairman and a vice-chairman, one of whom shall be a senator and the other a representative and it shall adopt its own rules of procedure. The council shall appoint such committees as may be necessary for the proper and efficient performance of its duties. Committees shall consist of members of the council and other members of the legislature. The council shall appoint a director of legislative services, who shall serve at the pleasure of the council, and ~~it the council~~ may employ such other employees and engage the services of such persons and agencies as may be necessary or desirable in the performance of its duties. ~~The director of legislative services and other employees shall serve at the pleasure of the council and each shall be paid a salary to be fixed by the council.~~

SECTION 6. That Section 67-429, Idaho Code, be, and the same is hereby amended to read as follows:

67-429. POWERS AND DUTIES. (1) It shall be the duty of the council to collect and compile information, to draft bills and to conduct research upon any subject which the legislature may authorize or direct or upon any subject which it may determine, provided that all activities of the council must be reasonably related to a legislative purpose. The legislature may make specific assignments to the council by a concurrent resolution approved by both houses.

(2) The council may hold public hearings and it may authorize or direct any of its committees to hold public hearings on any matters within the jurisdiction of the council.

(3) ~~The council shall establish and maintain a legislative reference library.~~

~~(4) For the purpose of conducting any study within the jurisdiction of the council, by resolution adopted by the affirmative vote of two-thirds (2/3) of the entire membership of the council, the chairman of the council may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence or other documents or records which the council deems relevant or material to any matter on which the council or any committee is conducting a study.~~

(54) It shall be the duty of the council to superintend and administer the legislative space in the capitol building at all times, and to prepare such space when required for the sessions of the legislature, which shall include the provision of furniture and equipment.

(65) The legislative council shall review and make recommendations to the administrator of the division of human resources on all aspects of the state personnel system, including policies, wages and salaries.

(6) The council shall release audit reports prepared by the legislative audits division of the legislative services office as provided in section 67-435, Idaho Code.

~~(7) The council has authority to appoint committees and hire staff or contract for services to implement the provisions of this section. In addition to the duties provided above, the council has authority to:~~

~~(a) Provide the legislature with research and analysis of current and projected state revenue, state expenditure and state tax expenditures;~~

~~(b) Provide the legislature with a report analyzing the governor's proposed levels of revenue and expenditures for budgets and supplemental budget requests submitted to the legislature;~~

~~(c) Provide an analysis of the impact of the governor's proposed revenue and expenditure plans for the next fiscal year;~~

~~(d) Conduct research on matters of economic and fiscal policy and report to the legislature on the result of the research;~~

~~(e) Provide economic reports and studies on the state of the state's economy including trends and forecasts for consideration by the legislature;~~

~~(f) Conduct budget and tax studies and provide general fiscal and budgetary information;~~

~~(g) Review and make recommendations on the operation of state programs in order to appraise the implementation of state laws regarding the expenditure of funds and to recommend means of improving their efficiency;~~

~~(h) Recommend to the legislature changes in the mix of revenue sources for programs, in the percentage of state expenditures devoted to major programs, and in the role of the legislature in overseeing state government expenditures and revenue projections;~~

~~(i) Make a continuing study and investigation of the building needs of the government of the state of Idaho, including, but not limited to, the~~

~~following: the current and future requirements of new buildings, the maintenance of existing buildings, rehabilitating and remodeling of old buildings, the planning of administrative offices, and exploring the methods of financing building and related costs; and~~

~~(j) Conduct a study of state local finance, analyzing and making recommendations to the legislature on issues including levels of state support for political subdivisions, basic levels of local need, balances of local revenues and options, relationship of local taxes to individuals' ability to pay and financial reporting by political subdivisions.~~

~~(8) In performing its duties under subsection (7) of this section, the council and its employees may consider, among other things:~~

~~(a) The relative dependence on state tax revenues, federal funds and user fees to support state-funded programs, and whether the existing mix of revenue sources is appropriate given the purpose of the programs;~~

~~(b) The relative percentages of state expenditures that are devoted to major programs such as education, assistance to local government, aid to individuals, state agencies and institutions and debt service; and~~

~~(c) The role of the legislature in overseeing state government expenditures, including legislative appropriation of money from the general account, legislative appropriation of money from funds other than the general account, state agency receipt of money into revolving and other dedicated funds and expenditure of money from these funds and state agency expenditure of federal funds.~~

~~(9) The council's recommendations shall consider the long term needs of the state. The recommendations must not duplicate work done by standing committees of the senate and house of representatives.~~

~~(10) The council may, after consultation with the governor and with the chairs of the standing committees of the legislature, select mandates and state programs for review. When selecting mandates, state aids or state programs to be reviewed, the council may consider those that involve payments to local units of government. Staff from affected agencies, staff from the division of financial management and legislative staff shall participate in the reviews.~~

~~(11) The following state aids and associated state mandates may be reviewed:~~

~~(a) Local government aid, ad valorem property tax credits, tax increment financing and fiscal disparities;~~

~~(b) Human service aids;~~

~~(c) Educational support dollars utilized for school district general fund aids, school district capital expenditure fund aids, and school district debt service fund aids;~~

~~(d) General government aids including natural resource aids, environmental protection aids, transportation aids, economic development aids and general infrastructure aids.~~

~~(12) At the direction of the council, the reviews of state aids and state mandates involving state financing of local government activities listed in subsection (11) of this section may include:~~

~~(a) The employment status, wages and benefits of persons employed in administering the programs;~~

~~(b) The desirable applicability of state procedural laws or rules;~~

~~(c) Methods for increasing political subdivision options in providing their share, if any, of program costs;~~

~~(d) Desirable redistributions of funding responsibilities for the program and the time period during which any recommended funding distribution should occur;~~

~~(e) Opportunities for reducing program mandates and giving political subdivisions more flexibility in meeting program needs;~~

~~(f) Comparability of treatment of similar units of government;~~

~~(g) The effect of the state aid or mandate on the distribution of tax burdens among individuals based upon ability to pay;~~
~~(h) Coordination of the payment or allocation formula with other state aid programs;~~
~~(i) Incentives that have been created for local spending decisions, and whether the incentives should be changed;~~
~~(j) Ways in which political subdivisions have changed their revenue-raising behavior since receiving these grants;~~
~~(k) An assessment of the accountability of all government agencies that participate in the administration of the program.~~
~~(13) The legislative council may provide for a complete audit of any and every fund in the state treasury and other state moneys at least once in every two (2) fiscal years, and commencing for fiscal year 1995 and each year thereafter shall provide for an annual statewide financial audit of the statewide annual financial report prepared by the state controller, and is hereby authorized:~~

~~(a) To supervise and examine the accounts and expenditures of the several departments and public institutions of the state and to prescribe rules necessary to assure the adequacy and timeliness of all audits performed for or on behalf of all political subdivisions thereof;~~
~~(b) To inspect securities held by the several departments and public institutions of the state and the political subdivisions thereof;~~
~~(c) To examine, at any and all times, the accounts of every private corporation, institution, association, or board receiving appropriations from the legislature or contracting for health and welfare services with the state of Idaho;~~
~~(d) To demand and receive reports from the state treasurer, state controller, director of the department of finance, and any other officer or agency, and from the several state depositories;~~
~~(e) To publish, from time to time, for the information of the several departments and of the general public, bulletins of the works of government;~~
~~(f) To be the official depository of all audits of the several departments and public institutions of the state and its political subdivisions; the filing of an audit with the official depository shall satisfy all requirements for the filing of an audit with the state, any other provision of law notwithstanding;~~
~~(g) To review or have reviewed the work papers or other documentation utilized in the audit of a state department or public institution of the state and its political subdivisions, and to reject for filing in the official depository any report based upon unsatisfactory work papers or inadequately supported documentation;~~
~~(h) To review and approve the terms and conditions or other statement of services to be provided on any or all contracts or agreements by state government agencies for audits or audit type services; and~~
~~(i) To report to the attorney general, for such action, civil or criminal, as the attorney general may deem necessary, all facts showing illegal expenditure of the public money or misappropriation of the public money or misappropriation of the public property. The governor and state controller shall also be notified when the report is made to the attorney general pursuant to this subsection.~~
~~All reports, findings and audits of the legislative council pursuant to this subsection shall be submitted to the legislature and to the governor.~~

SECTION 7. That Section 67-431, Idaho Code, be, and the same is hereby amended to read as follows:

67-431. COMPENSATION AND EXPENSES. Members of the council and the committees thereof shall be reimbursed for actual expenses necessarily

incurred in attending meetings and in the performance of their official duties, ~~and they shall receive the sum of thirty five dollars (\$35.00) for each day spent in traveling intrastate to or from regular council meetings by the most direct route and in attendance at meetings or in the performance of other duties directed by the council, and may, subject to rules adopted by the legislative council, receive the sum of thirty five dollars (\$35.00) for each day spent in traveling to or from intrastate meetings in accordance with the rates established by the citizens' committee on legislative compensation as authorized in section 67-406b, Idaho Code.~~

SECTION 8. That Section 67-435, Idaho Code, be, and the same is hereby amended to read as follows:

67-435. POWERS AND DUTIES. (1) The joint finance-appropriations committee shall have the following powers and duties:

(1a) To review the executive budget and the budget requests of each state department, agency and institution, including requests for construction of capital improvements, as well as other requests for appropriations submitted to the legislature.

(2b) To conduct such hearings as it may deem necessary and proper.

(3c) To submit a report to each session of the legislature covering its activities during the preceding period and setting forth its findings and recommendations and to make such recommendations to the appropriate legislative committees as it may deem proper concerning the budget and other proposed legislation.

~~(4) To require copies of all audit reports issued by the legislative council employees or contractors, and to require access to all audit working papers and other records of the employees or contractors of the legislative council.~~

(5d) To perform such other duties as the legislature or legislative council may by appropriate resolution direct.

(2) The joint finance-appropriations committee shall use the following procedures for releasing reports produced by the legislative audits division:

(a) All reports produced by the legislative audits division shall be delivered to the cochairs of the joint finance-appropriations committee for their review and approval prior to release;

(b) The cochairs of the joint finance-appropriations committee may, at their discretion, conduct hearings relating to any report and seek input and testimony prior to, or after reports are released; and

(c) After such review as deemed necessary and prudent by the cochairs of the joint finance-appropriations committee, the cochairs shall release the reports produced by the legislative audits division within sixty (60) days of submission to the cochairs; except in the event that a report is returned to the legislative audits division for further audit or review, then the cochairs shall approve the release of reports within sixty (60) days after the report is resubmitted to the cochairs.

SECTION 9. That Section 67-450B, Idaho Code, be, and the same is hereby amended to read as follows:

67-450B. INDEPENDENT FINANCIAL AUDITS BY GOVERNMENTAL ENTITIES -- FILING REQUIREMENTS. (1) The requirements set forth in this section are minimum audit requirements for all local governmental entities, and include, without limitation, all cities, counties, authorities and districts organized as separate legal and reporting entities under Idaho law, and include the councils, commissions and boards as appointed or elected and charged with fiscal management responsibilities of the local governmental entity.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The entity's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The entity shall file ~~two (2) copies~~ one (1) copy of each completed audit report with the legislative ~~council services office~~ services office within ~~ten (10) days after receiving the audit from the contracting independent auditor~~ nine (9) months after the end of the audit period.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of a local governmental entity whose annual ~~budget~~ expenditures (from all sources) exceeds two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of a local governmental entity whose annual ~~budget~~ expenditures (from all sources) exceeds one hundred thousand dollars (\$100,000), but does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity's ~~budget~~ annual expenditures does not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.

~~(c) The governing body of a local governmental entity whose annual budget (from all sources) exceeds fifty thousand dollars (\$50,000), but does not exceed one hundred thousand dollars (\$100,000) may elect to have its financial statements reviewed on a biennial basis and may continue biennial review cycles in subsequent years as long as the entity's annual budget does not exceed one hundred thousand dollars (\$100,000) during either year of any biennial period. Biennial reports of review shall include a review of each fiscal year since the previous review report.~~

~~(d) The governing body of a local governmental entity whose annual budget expenditures (from all sources) does not exceed fifty one hundred thousand dollars (\$5100,000) has no minimum audit requirements under this section.~~

~~(ed) Federal audit requirements applicable because of receipt expenditure of federal assistance supersede the minimum audit requirements provided in this section.~~

SECTION 10. That Section 67-450C, Idaho Code, be, and the same is hereby amended to read as follows:

67-450C. INDEPENDENT FINANCIAL AUDITS OF AFFILIATED ORGANIZATIONS TO STATE GOVERNMENTAL AGENCIES OR ENTITIES -- FILING REQUIREMENTS. (1) The requirements set forth in this section are minimum audit requirements for all affiliated organizations to state governmental entities, and include, without limitation, all state departments, commissions, institutions, colleges or universities, which are created pursuant to statute or the constitution and which receive an appropriation from the legislature.

As used in this section "affiliated organization" means an organization affiliated with an agency or entity of state government which meets all of the following criteria:

(a) The organization has separate legal standing, where neither direct association through appointment of a voting majority of the organization's body nor fiscal dependency exists.

(b) The affiliation with a specific primary state government agency or entity is set forth in the organization's articles of incorporation by reference to the name of the primary state government agency or entity in describing the purposes for which the organization was established.

(c) The affiliation with a specific primary state government agency or entity is set forth in the organization's application to the internal revenue service for exemption for payment of federal income tax pursuant to the internal revenue code by reference to the name of the primary government in response to any of the questions contained in the exemption application and the organization has been granted that exemption.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The affiliated organization's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The affiliated organization shall file ~~two (2) copies~~ one (1) copy of each completed audit report with the legislative ~~council~~ services office within ~~ten (10) days after receiving the audit from the contracting independent auditor~~ nine (9) months after the end of the audit period.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of an affiliated organization whose annual ~~budget~~ expenditures (from all sources) exceeds two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of an affiliated organization whose annual ~~budget~~ expenditures (from all sources) exceeds one hundred thousand dollars (\$100,000), but does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the organization's ~~budget~~ annual expenditures does not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.

(c) The governing body of an affiliated organization whose annual ~~budget~~ expenditures (from all sources) ~~exceeds fifty thousand dollars (\$50,000), but does not exceed one hundred thousand dollars (\$100,000) may elect to have its financial statements reviewed on a biennial basis and may continue biennial review cycles in subsequent years as long as the affiliated organization's annual budget does not exceed one hundred thousand dollars (\$100,000) during either year of any biennial period. Biennial reports of review shall include a review of each fiscal year since the previous review report~~ has no minimum audit requirements under this section.

~~(d) The governing body of an affiliated organization whose annual budget (from all sources) does not exceed fifty thousand dollars (\$50,000) has no minimum audit requirements under this section.~~

(ed) Federal audit requirements applicable because of ~~receipt~~ expenditure of federal assistance supersede the minimum audit requirements provided in this section.

SECTION 11. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 7, Title 67, Idaho Code, and to read as follows:

CHAPTER 7
LEGISLATIVE SERVICES OFFICE

67-701. LEGISLATIVE SERVICES OFFICE. There is hereby created under the direction of the legislative council the legislative services office which shall carry out the professional and nonpartisan responsibilities defined in this chapter. The legislative council shall appoint a director of the legislative services office who shall serve at the pleasure of the council and who may employ such employees and engage the services of such persons and agencies as may be necessary or desirable in the performance of the legislative council's duties. Employees of the legislative services office are nonclassified, at-will employees and shall serve at the pleasure of the director.

67-702. AUDIT FUNCTION OF LEGISLATIVE SERVICES OFFICE. (1) The legislative services office at the direction of the legislative council has authority to:

(a) Perform an annual audit of the statewide annual financial report prepared by the state controller in accordance with generally accepted government auditing standards.

(b) Perform an annual audit of federal financial assistance provided to the state that meets the requirements established by the federal government.

(c) Perform a management review of each executive department of state government at least once in a three (3) year period. Management reviews shall cover the period since the last review and may include evaluation of internal controls over financial and program activities and other matters related to the department's operations.

(d) Provide audit services to any unit of state government or public institution that requests services, if authorized by the legislative council.

(e) Report to the attorney general all facts which may indicate malfeasance, illegal expenditure of public funds or misappropriation of public funds or public property for such investigation or action, civil or criminal, as the attorney general may deem necessary. The governor and state controller shall also be notified when the report is made to the attorney general pursuant to this subsection. The legislature shall be informed through the regular audit process pursuant to section 67-429, Idaho Code.

(f) Be the official repository of all audit reports of the state and political subdivisions that are required to be audited pursuant to sections 67-450B and 67-450C, Idaho Code.

(2) The legislative council reserves the right to audit or examine any and every fund in the state treasury and any institution, association, board or other defined entity created by, or that receives an appropriation from, the legislature.

67-703. BUDGET AND POLICY ANALYSIS -- FUNCTION OF LEGISLATIVE SERVICES OFFICE. The legislative services office at the direction of the legislative council has authority to:

(1) Provide the legislature with research and analysis of current and projected state revenue, state expenditure and state tax expenditures;

(2) Provide the legislature with a report analyzing the governor's proposed levels of revenue and expenditures for budgets and supplemental budget requests submitted to the legislature;

(3) Provide an analysis of the impact of the governor's proposed revenue and expenditure plans for the next fiscal year;

(4) Review and evaluate requests for appropriations, including proposed plans and policies related to such requests, and make recommendations

to the joint finance-appropriations committee and the legislature in relation thereto;

(5) Prepare draft legislation, statements of purpose and fiscal notes that individually or collectively represent motions affirmatively voted upon by the senate finance and house of representatives appropriations committees to provide each state agency with an annual budget;

(6) Have access, with or without prior notice, during regular operating hours to any records or other documents maintained by any state agency relating to their expenditures, revenues, operations and structure;

(7) Conduct research on matters of economic and fiscal policy and report to the legislature on the result of the research;

(8) Provide economic reports and studies on the state of the state's economy, including trends and forecasts for consideration by the legislature;

(9) Conduct budget and tax studies and provide general fiscal and budgetary information;

(10) Review and make recommendations on the operation of state programs in order to appraise the implementation of state laws regarding the expenditure of funds and to recommend means of improving their efficiency;

(11) Recommend to the legislature changes in the mix of revenue sources for programs, in the percentage of state expenditures devoted to major programs, and in the role of the legislature in overseeing state government expenditures and revenue projections;

(12) Make a continuing study and investigation of the building needs of the government of the state of Idaho, including, but not limited to, the following: the current and future requirements of new buildings, the maintenance of existing buildings, rehabilitating and remodeling of old buildings, the planning of administrative offices, and exploring the methods of financing buildings and related costs;

(13) Conduct studies of state and local finances, analyzing and making recommendations to the legislature on issues including levels of state support for political subdivisions, basic levels of local need, balances of local revenues and options, relationship of local taxes to individuals' abilities to pay and financial reporting by political subdivisions; and

(14) Develop and make available to the legislature and its standing or special legislative committees such fiscal information as will assist the legislature or any legislative committee in its deliberations.

67-704. RESEARCH AND LEGISLATION -- FUNCTION OF LEGISLATIVE SERVICES OFFICE. (1) The legislative services office at the direction of the legislative council shall have authority to prepare or assist in the preparation or amendment of legislative bills at the request of any committee or member of the senate or house of representatives. From August 1 until December 1 of each year, upon request from the governor, lieutenant governor, attorney general, state controller, secretary of state, superintendent of public instruction or state treasurer, the legislative services office at the direction of the legislative council shall have authority to prepare legislative bills for such constitutional officer.

(2) In administering this section the legislative services office shall establish and maintain a legislative reference library.

(3) The legislative services office shall review and analyze administrative rules in accordance with section 67-454, Idaho Code, and perform other duties as required by the legislative council.

(4) The legislative services office is directed to furnish such secretarial and other staff assistance as the citizens' committee on legislative compensation and the redistricting commission may require in the performance of their duties.

SECTION 12. That Section 72-1507, Idaho Code, be, and the same is hereby amended to read as follows:

72-1507. STAFF EXPENSES OF COMMISSION. ~~The legislative council is directed to furnish such secretarial and other staff assistance as the commission may require in the performance of its duties.~~ The council shall prepare and submit a budget for the expenses of the commission, including staff, equipment, meetings, salary and expense reimbursement of members, for consideration by the legislature not later than the session held in a year ending in nine (9) preceding the convening of a commission.

SECTION 13. That Section 34-301, Idaho Code, be, and the same is hereby amended to read as follows:

34-301. ESTABLISHMENT OF ELECTION PRECINCTS BY COUNTY COMMISSIONERS -- LISTS AND MAPS TO BE FURNISHED TO SECRETARY OF STATE. The board of county commissioners in each county shall establish a convenient number of election precincts therein. The board of county commissioners may establish an absentee voting precinct for each legislative district within the county. The boundaries of such absentee precincts shall be the same as those of the legislative districts for which they were established. The board shall have the authority to create new or consolidate established precincts only within the boundaries of ~~the~~ legislative districts ~~provided by section 67-202, Idaho Code~~. No county shall have less than two (2) precincts. This board action shall be done no later than January 15 in a general election year. The January 15 deadline shall be waived during a general election year in which a legislative or court ordered redistricting plan is adopted. In such cases, any precinct boundary adjustments shall be accomplished by the county commissioners as soon as is practicable.

The county clerk of each county shall provide, and the secretary of state shall maintain in his office, a current and accurate report of the following:

- (a) A list of all precincts within the county;
- (b) A map of all precincts within the county;
- (c) A count of voters registered for the latest general election, by precinct;
- (d) A count of votes cast at the latest general election, by precinct.

Law without signature.

CHAPTER 53
(H.B. No. 143)

AN ACT

RELATING TO MUNICIPAL CORPORATIONS AND ANNEXATION; AMENDING SECTION 50-222, IDAHO CODE, TO REVISE PROVISIONS RELATING TO EVIDENCE OF CONSENT TO ANNEXATION AND TO PROVIDE FOR EXCEPTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-222, Idaho Code, be, and the same is hereby amended to read as follows:

50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and

fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

(2) General authority. Cities have the authority to annex land into a city upon compliance with the procedures required in this section. In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time of annexation. Provided further, that said city council shall not have the power to declare such land, lots or blocks a part of said city if they will be connected to such city only by a shoestring or strip of land which comprises a railroad or highway right-of-way.

(3) Annexation classifications. Annexations shall be classified and processed according to the standards for each respective category set forth herein. The three (3) categories of annexation are:

(a) Category A: Annexations wherein:

(i) All private landowners have consented to annexation. Annexation where all landowners have consented may extend beyond the city area of impact provided that the land is contiguous to the city and that the comprehensive plan includes the area of annexation;

(ii) Any residential enclaved lands of less than one hundred (100) privately-owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city or which are bounded on all sides by lands within a city and by the boundary of the city's area of impact; or

(iii) The lands are those for which owner approval must be given pursuant to subsection (5) (b) (v) of this section.

(b) Category B: Annexations wherein:

(i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation; or

(ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have consented to annexation prior to the commencement of the annexation process; or

(iii) The lands are the subject of a development moratorium or a water or sewer connection restriction imposed by state or local health or environmental agencies; provided such lands shall not be counted for purposes of determining the number of separate private ownerships and platted lots of record aggregated to determine the appropriate category.

(c) Category C: Annexations wherein the subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have not consented to annexation prior to commencement of the annexation process.

(4) (a) Evidence of consent to annexation. For purposes of this section, and unless excepted in paragraph (b) of this subsection (4), consent to annex shall be valid only when evidenced by written instrument consenting to annexation executed by the owner or the owner's authorized agent. ~~Consent shall be implied for the area of all lands connected to a water or wastewater collection system operated by the city only if the connection was requested or completed prior to July 1, 2008.~~ Written consent to annex lands must be recorded in the county recorder's office to be binding upon subsequent purchasers, heirs, or

assigns of lands addressed in the consent. Lands need not be contiguous or adjacent to the city limits at the time the landowner consents to annexation for the property to be subject to a valid consent to annex; provided however, no annexation of lands shall occur, irrespective of consent, until such land becomes contiguous or adjacent to such city.

(b) Exceptions to the requirement of written consent to annexation. The following exceptions apply to the requirement of written consent to annexation provided for in subsection (4) (a) of this section:

(i) Enclaved lands: In category A annexations, no consent is necessary for enclaved lands meeting the requirements of subsection (3) (a) (ii) of this section;

(ii) Implied consent: In category B and C annexations, valid consent to annex is implied for the area of all lands connected to a water or wastewater collection system operated by the city if the connection was requested in writing by the owner, or the owner's authorized agent, or completed before July 1, 2008.

(5) Annexation procedures. Annexation of lands into a city shall follow the procedures applicable to the category of lands as established by this section. The implementation of any annexation proposal wherein the city council determines that annexation is appropriate shall be concluded with the passage of an ordinance of annexation.

(a) Procedures for category A annexations: Lands lying contiguous or adjacent to any city in the state of Idaho may be annexed by the city if the proposed annexation meets the requirements of category A. Upon determining that a proposed annexation meets such requirements, a city may initiate the planning and zoning procedures set forth in chapter 65, title 67, Idaho Code, to establish the comprehensive planning policies, where necessary, and zoning classification of the lands to be annexed.

(b) Procedures for category B annexations: A city may annex lands that would qualify under the requirements of category B annexation if the following requirements are met:

(i) The lands are contiguous or adjacent to the city and lie within the city's area of city impact;

(ii) The land is laid off into lots or blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres, or whenever the land is surrounded by the city. Splits of ownership which occurred prior to January 1, 1975, and which were the result of placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered as evidence of an intent to develop such land and shall not be sufficient evidence that the land has been laid off or subdivided in lots or blocks. A single sale after January 1, 1975, of five (5) acres or less to a family member of the owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section. For purposes of this section, "family member" means a natural person or the spouse of a natural person who is related to the owner by blood, adoption or marriage within the first degree of consanguinity;

(iii) Preparation and publication of a written annexation plan, appropriate to the scale of the annexation contemplated, which includes, at a minimum, the following elements:

(A) The manner of providing tax-supported municipal services to the lands proposed to be annexed;

(B) The changes in taxation and other costs, using examples, which would result if the subject lands were to be annexed;

(C) The means of providing fee-supported municipal services, if any, to the lands proposed to be annexed;

(D) A brief analysis of the potential effects of annexation upon other units of local government which currently provide tax-supported or fee-supported services to the lands proposed to be annexed; and

(E) The proposed future land use plan and zoning designation or designations, subject to public hearing, for the lands proposed to be annexed;

(iv) Compliance with the notice and hearing procedures governing a zoning district boundary change as set forth in section 67-6511, Idaho Code, on the question of whether the property should be annexed and, if annexed, the zoning designation to be applied thereto; provided however, the initial notice of public hearing concerning the question of annexation and zoning shall be published in the official newspaper of the city and mailed by first class mail to every property owner with lands included in such annexation proposal not less than twenty-eight (28) days prior to the initial public hearing. All public hearing notices shall establish a time and procedure by which comments concerning the proposed annexation may be received in writing and heard and, additionally, public hearing notices delivered by mail shall include a one (1) page summary of the contents of the city's proposed annexation plan and shall provide information regarding where the annexation plan may be obtained without charge by any property owner whose property would be subject to the annexation proposal.

(v) In addition to the standards set forth elsewhere in this section, annexation of the following lands must meet the following requirements:

(A) Property, owned by a county or any entity within the county, that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of county commissioners of the county in which the property lies; and

(B) Property, owned by a nongovernmental entity, that is used to provide outdoor recreational activities to the public and that has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services must have the express written permission of the nongovernmental entity owner.

(vi) After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such ordinance, the city must make express findings, to be set forth in the minutes of the city council meeting at which the annexation is approved, as follows:

(A) The land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section;

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

(C) The annexation is reasonably necessary for the orderly development of the city;

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

(c) Procedures for category C annexations: A city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:

(i) Compliance with the procedures governing category B annexations; and

(ii) Evidence of consent to annexation based upon the following procedures:

(A) Following completion of all procedures required for consideration of a category B annexation, but prior to enactment of an annexation ordinance and upon an affirmative action by the city council, the city shall mail notice to all private landowners owning lands within the area to be annexed, exclusive of the owners of lands that are subject to a consent to annex which complies with subsection (4) (a) of this section defining consent. Such notice shall invite property owners to give written consent to the annexation, include a description of how that consent can be made and where it can be filed, and inform the landowners where the entire record of the subject annexation may be examined. Such mailed notice shall also include a legal description of the lands proposed for annexation and a simple map depicting the location of the subject lands.

(B) Each landowner desiring to consent to the proposed annexation must submit the consent in writing to the city clerk by a date specified in the notice, which date shall not be later than forty-five (45) days after the date of the mailing of such notice.

(C) After the date specified in the notice for receipt of written consent, the city clerk shall compile and present to the city council a report setting forth: (i) the total physical area sought to be annexed, and (ii) the total physical area of the lands, as expressed in acres or square feet, whose owners have newly consented in writing to the annexation, plus the area of all lands subject to a prior consent to annex which complies with subsection (4) (a) of this section defining consent. The clerk shall immediately report the results to the city council.

(D) Upon receiving such report, the city council shall review the results and may thereafter confirm whether consent was received from the owners of a majority of the land. The results of the report shall be reflected in the minutes of the city council. If the report as accepted by the city council confirms that owners of a majority of the land area have consented to annexation, the city council may enact an ordinance of annexation, which thereafter shall be published and become effective according to the terms of the ordinance. If the report confirms that owners of a majority of the land area have not consented to the annexation, the category C annexation shall not be authorized.

(6) The decision of a city council to annex and zone lands as a category B or category C annexation shall be subject to judicial review in accordance with the procedures provided in chapter 52, title 67, Idaho Code, and pursuant to the standards set forth in section 67-5279, Idaho Code. Any such appeal shall be filed by an affected person in the appropriate district court no later than twenty-eight (28) days after the date of publication of the annexation ordinance. All cases in which there may arise a question of the validity of any annexation under this section shall be advanced as a matter of immediate public interest and concern, and shall be heard by the district court at the earliest practicable time.

(7) Annexation of noncontiguous municipal airfield. A city may annex land that is not contiguous to the city and is occupied by a municipally owned or operated airport or landing field. However, a city may not annex any other land adjacent to such noncontiguous facilities which is not otherwise annexable pursuant to this section.

Approved March 25, 2009.

CHAPTER 54
(H.B. No. 40)

AN ACT

RELATING TO THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; AMENDING SECTION 41-4303, IDAHO CODE, TO PROVIDE THAT THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT APPLIES TO STRUCTURED SETTLEMENT ANNUITIES, TO PROVIDE THAT THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT DOES NOT APPLY TO CERTAIN POLICIES OR CONTRACTS AND SHALL NOT PROVIDE COVERAGE TO CERTAIN PERSONS WHO RECEIVE COVERAGE BY AN ASSOCIATION OF ANOTHER STATE; AMENDING SECTION 41-4305, IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4308, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DUTIES AND LIABILITY OF THE ASSOCIATION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-4319, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROHIBITED ADVERTISEMENT IN THE SALE OF INSURANCE AND TO SPECIFY THAT CERTAIN WRITTEN MATERIAL IS NOT PROHIBITED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-4303, Idaho Code, be, and the same is hereby amended to read as follows:

41-4303. APPLICATION OF CHAPTER. (1) This chapter shall apply to direct life insurance policies, contractual obligations of managed care plans to members of such plans only, disability insurance policies, annuity contracts, and contracts supplemental to life and disability insurance policies, annuity contracts, and contracts supplemental to life and disability insurance policies and annuity contracts issued by persons licensed to transact insurance in this state at any time. Covered policies shall include annuities owned by a trust for a money purchase pension plan, profit sharing plan, 401(k) thrift plan or any other defined contribution plan, ~~and~~ annuities owned by a custodian of an individual retirement account and structured settlement annuities.

(2) This chapter shall not apply to:

- (a) That portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer;
- (b) That portion or part of any policy or contract under which the risk is borne by the policyholder;
- (c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;
- (d) Any such policy or contract issued by a reciprocal insurer, mutual benefit association, fraternal benefit society, hospital and medical service corporation, limited managed care plan, or self-funded health care plan;
- (e) Any unallocated annuity contract, including an annuity owned by a defined benefit pension plan or trust;

(f) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or exchanges in value:

(i) Averaged over the period of four (4) years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four (4) year period or for such lesser period if the policy or contract was issued less than four (4) years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; ~~and~~

(ii) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available; ~~and~~

(iii) For purposes of this section, "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto; ~~or~~

(g) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policyowner, including without limitation:

(i) Claims based on marketing materials;

(ii) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(iii) Misrepresentations of or regarding policy benefits;

(iv) Extra-contractual claims; or

(v) A claim for penalties or consequential or incidental damages;

or

(h) A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to 42 U.S.C. chapter 7, subchapter XVIII, parts C and D, commonly known as medicare part C and D, or any regulations issued pursuant thereto.

(3) This chapter shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary receives any coverage by the association of another state.

(4) In order to avoid duplicate coverage, a person who is eligible for coverage under the provisions of this chapter and is currently provided coverage under the laws of any other state shall not be provided coverage under this chapter. This chapter shall be construed in conjunction with other states' laws in order to ensure coverage by only one (1) association.

SECTION 2. That Section 41-4305, Idaho Code, be, and the same is hereby amended to read as follows:

41-4305. DEFINITIONS. As used in this ~~act~~ chapter:

(1) "Account" means either of the three (3) accounts created under section 41-4306, Idaho Code.

(2) "Association" means the Idaho life and health insurance guaranty association created under section 41-4306, Idaho Code.

~~(3) "Director" means director of the department of insurance of this state.~~

~~(4)~~ "Contractual obligation" means any obligation under covered policies.

(54) "Covered policy" means any policy or contract within the scope of this ~~act~~ chapter under section 41-4303, Idaho Code.

(5) "Director" means director of the department of insurance of this state.

(6) "Impaired insurer" means a member insurer deemed by the director after the effective date of this ~~act~~ chapter to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

(7) "Insolvent insurer" means a member insurer which after the effective date of this ~~act~~ chapter, becomes insolvent and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction.

(8) "Member insurer" means any person licensed to transact in this state any kind of insurance to which this ~~act~~ chapter applies under section 41-4303, Idaho Code.

(9) ~~"Premiums" means direct gross insurance premiums and annuity considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.~~

~~(10) "Person" means any individual, corporation, partnership, association or voluntary organization.~~

(10) "Premiums" means direct gross insurance premiums and annuity considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.

(11) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed.

(12) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments to a plaintiff or other claimant for or with respect to personal injury suffered by the plaintiff or other claimant.

(13) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

SECTION 3. That Section 41-4308, Idaho Code, be, and the same is hereby amended to read as follows:

41-4308. POWERS AND DUTIES OF THE ASSOCIATION. In addition to the powers and duties enumerated in other sections of this ~~act~~ chapter:

(1) If a domestic insurer is an impaired insurer, the association may, subject to any conditions imposed by the association, other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the director:

(a) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of residents of the impaired insurers;

(b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate and assure payment of the contractual obligations to residents of the impaired insurer pending action under paragraph (a) of this subsection;

(c) Loan money to the impaired insurer.

(d) This chapter shall provide coverage for the policies and contracts specified in subsection (1) of this section, for persons who are not residents, but only under the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) The director has determined that by statute, similar protection is not available for such nonresidents as that provided in this chapter for residents of this state; and

(iii) The policy or contract establishing or creating the obligation is not a managed care plan.

(2) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of residents of the insolvent insurer;

(b) Assume payment of the contractual obligations to residents of the insolvent insurer; and

(c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(d) This chapter shall provide coverage for the policies and contracts specified in subsection (2) of this section, for persons who are not residents, but only under the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) The director has determined that by statute, similar protection is not available for such nonresidents as that provided by this chapter for residents of this state; and

(iii) The policy or contract establishing or creating the obligation is not a managed care plan.

(3) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) Assure payment of the contractual obligations of the insolvent insurer to residents; and

(c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

Provided, however, that this subsection shall not apply where the director has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this ~~act~~ chapter for residents of this state.

(4) (a) In carrying out its duties under subsections (2) and (3) of this section, permanent policy liens, or contract liens may be imposed in connection with any guarantee, assumption or reinsurance agreement, if the court:

(i) Finds that the amounts which can be assessed under this ~~act~~ chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, to be in the public interest; and

(ii) Approves the specific policy liens or contract liens to be used.

(b) Before being obligated under subsections (2) and (3) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values and such temporary moratoriums and liens may be imposed if they are approved by the court.

(5) If the association fails to act within a reasonable period of time as provided in subsections (2) and (3) of this section, the director shall have the powers and duties of the association under this ~~act~~ chapter with respect to insolvent insurers.

(6) The association may render assistance and advice to the director upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(7) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this ~~aet~~ chapter. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(8) (a) Any person receiving benefits under this ~~aet~~ chapter shall be deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received because of this ~~aet~~ chapter whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this ~~aet~~ chapter upon such person. The association shall be subrogated to these rights against the assets of any insolvent insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this ~~aet~~ chapter.

(9) The contractual obligations of the insolvent insurer for which the association becomes or may become liable shall be the lesser of:

(a) The contractual obligations for which the insolvent insurer would have been liable in the absence of an insolvency; or

(b) Unless such obligations are reduced as permitted by subsection (4) of this section, the aggregate liability of the association shall not exceed the following per policy:

(i) One hundred thousand dollars (\$100,000) in net cash surrender in net cash withdrawal values for life insurance, or three hundred thousand dollars (\$300,000) in life insurance death benefits;

(ii) Three hundred thousand dollars (\$300,000) in disability insurance claims or benefit payments, or one hundred thousand dollars (\$100,000) in net cash surrender and net cash withdrawal values for disability benefits;

~~(iii) Three hundred thousand dollars (\$300,000) of annuity benefit payments for annuities for which periodic annuity benefits, for a period of not less than the annuitant's lifetime or for a period certain of not less than ten (10) years, have begun to be paid on or before the date of the impairment or insolvency, or one~~
Two hundred fifty thousand dollars (\$10250,000) in the present value of annuity benefits, including net cash surrender or net cash withdrawal values; or

(iv) Where no coverage limit has been specified for a covered policy or benefit, the coverage limit shall be three hundred thousand dollars (\$300,000).

(c) In no event shall the association be liable to expend more than three hundred thousand dollars (\$300,000) in the aggregate for all benefits, including cash values, with respect to any one (1) life.

(10) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this ~~aet~~ chapter;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 41-4309, Idaho Code;

(c) Borrow money to effect the purposes of this ~~act~~ chapter. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this ~~act~~ chapter;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid payment of improper claims;

(g) Exercise, for the purposes of this ~~act~~ chapter and to the extent approved by the director, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

SECTION 4. That Section 41-4319, Idaho Code, be, and the same is hereby amended to read as follows:

41-4319. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY ASSOCIATION ACT IN SALE OF INSURANCE. No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Idaho life and health insurance guaranty association act. Provided, however, that this section shall not apply to the Idaho life and health insurance guaranty association or any other entity which does not sell or solicit insurance. This section shall also not prohibit the furnishing of written information that is in a form prepared by the association and approved by the director upon request of the policyowner.

Approved March 25, 2009.

CHAPTER 55
(H.B. No. 57)

AN ACT

RELATING TO THE IDAHO DIGITAL LEARNING ACADEMY; AMENDING SECTION 33-1228, IDAHO CODE, TO PROVIDE THAT PUBLIC SCHOOL EMPLOYMENT SHALL BE DEFINED TO INCLUDE THE EMPLOYEES OF THE IDAHO DIGITAL LEARNING ACADEMY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-5503, IDAHO CODE, TO REVISE THE MAKEUP OF THE IDAHO DIGITAL LEARNING ACADEMY BOARD OF DIRECTORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-5504A, IDAHO CODE, TO REVISE STATUTORY PROVISIONS REGARDING THE IDAHO DIGITAL LEARNING ACADEMY CONCERNING SICK LEAVE AND SEVERANCE ALLOWANCE AT RETIREMENT; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1228, Idaho Code, be, and the same is hereby amended to read as follows:

33-1228. SEVERANCE ALLOWANCE AT RETIREMENT. (1) Upon separation from public school employment by retirement in accordance with chapter 13, title 59, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, as provided by section 33-1218, Idaho Code, and shall be reported by the employer to the Idaho public employee retirement system. A sum equal to one-half (1/2) of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by subsection (23) of this section and shall be credited to such employee's retirement account. Such sums shall be used by the retirement board to continue to pay, subject to applicable federal tax limits:

(a) Premiums for the retiree and the retiree's dependents at the rate for the active employee's group health, long-term care, vision, prescription drug and dental insurance programs as maintained by the employer for the active employees until the retiree and/or the retiree's spouse becomes eligible for medicare at which time the district shall make available a supplemental program to medicare for the eligible individual. Upon the death of the retiree the surviving spouse's health coverage shall be available and continued under the same terms and conditions as the retiree. Coverage may be continued for the retiree's surviving dependent spouse and dependents until remarriage of the spouse or until the retiree's surviving dependent spouse is eligible for a group health program by an employer. The medicare supplement program will provide the same premium and benefits for all retirees of all the employers served by the same insurance carrier. However, a school district may make available to all retirees from that district other benefits in addition to the medicare supplement program and the retiree or the district shall pay for such additional benefits.

(b) Premiums at the time of retirement for the retiree for the life insurance program maintained by the employer which may be reduced to a minimum of five thousand dollars (\$5,000) of coverage.

(2) The retiree may continue to pay the premiums for the health, accident, dental and life insurance to the extent of the funds credited to the employee's account pursuant to this section and when these funds are expended the premiums may be deducted from the retiree's allowance. Upon a retiree's death, any unexpended sums remaining in the retiree's account shall revert to the sick leave account. If funds are not available for payment by the Idaho public employee retirement system from the retiree's surviving dependent spouse's allowance, the insurance carrier shall implement a direct billing procedure to permit the retiree's surviving spouse to continue coverage.

(3) Each employer shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in section 59-1305, Idaho Code. Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget.

(4) For purposes of this section public school employment shall be defined to include the employees of the Idaho digital learning academy, and to permit inclusion of employees of organizations funded by school districts or of contributions of employees of school districts.

SECTION 2. That Section 33-5503, Idaho Code, be, and the same is hereby amended to read as follows:

33-5503. ACADEMY BOARD OF DIRECTORS. (1) There is hereby created an academy board of directors which shall be responsible for the development and oversight of the Idaho digital learning academy.

(2) The academy board of directors shall be comprised of eight (8) voting members and one (1) nonvoting member as follows:

(a) Three (3) members shall be superintendents, each elected to a three (3) year term and each representing two (2) educational classification regions as established by the state board of education. One (1) superintendent shall be elected from among the superintendents in regions one and two on a rotating term basis between the two (2) regions; one (1) superintendent shall be elected from among the superintendents in regions three and four on a rotating term basis between the two (2) regions; and one (1) superintendent shall be elected from among the superintendents in regions five and six on a rotating term basis between the two (2) regions;

(b) Two (2) members shall be ~~high school~~ principals, each elected to a three (3) year term by the governing body of the Idaho association of ~~secondary~~ school administrators;

(c) Two (2) members shall be citizens at-large who are not professional educators, appointed by the members of the academy board, each to a term of three (3) years; ~~and~~

(d) The state superintendent of public instruction shall be a voting member and shall serve concurrently with the term of office to which the state superintendent is elected; and

(e) One (1) member shall be an ex officio, nonvoting member appointed by the academy board of directors to serve as secretary to the academy board.

(3) For purposes of establishing staggered terms of office, the initial term of office for the superintendent position representing educational classification regions one and two shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the superintendent position representing educational classification regions three and four shall be two (2) years, and thereafter shall be three (3) years. The superintendent position representing educational classification regions five and six shall be three (3) years. The initial term of office for one (1) ~~high school~~ principal position shall be one (1) year and thereafter shall be three (3) years, and the initial term of office for the other ~~high school~~ principal position shall be two (2) years and thereafter shall be three (3) years. The initial term of office for one (1) member at-large shall be one (1) year and thereafter shall be three (3) years, and the term of office for the other member at-large shall be three (3) years.

(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(5) The board shall meet in person at least three (3) times annually; none of these three (3) meetings shall be conducted by telephone or video conferencing.

SECTION 3. That Section 33-5504A, Idaho Code, be, and the same is hereby amended to read as follows:

33-5504A. GOVERNMENTAL ENTITY ~~LIABILITY~~ ~~INSURANCE~~. (1) The Idaho digital learning academy shall be a governmental entity as provided in section 33-5502, Idaho Code. For the purposes of section 59-1302(15), Idaho Code, the Idaho digital learning academy created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-36220, Idaho Code, sales to or purchases by the Idaho digital learning academy are exempt from payment of the sales and use tax. The Idaho digital learning academy, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

- (a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;
- (b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;
- (c) Chapter 7, title 59, Idaho Code, on ethics in government;
- (d) Chapter 23, title 67, Idaho Code, on open public meetings; ~~and~~
- (e) Chapter 3, title 9, Idaho Code, on disclosure of public records;
- (f) Section 33-1216, Idaho Code, on sick and other leave;
- (g) Section 33-1217, Idaho Code, on accumulation of unused sick leave;
- (h) Section 33-1218, Idaho Code, on sick leave in excess of statutory minimum amounts; and
- (i) Section 33-1228, Idaho Code, on severance allowance at retirement.

(2) The Idaho digital learning academy may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(3) The Idaho digital learning academy shall secure insurance for liability and property loss.

(4) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho digital learning academy, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection (4). The board of directors of the Idaho digital learning academy may accept and award contracts involving the Idaho digital learning academy to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho digital learning academy for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho digital learning academy, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho digital learning academy within the meaning of this section; nor shall the payment of compensation by the Idaho digital learning academy board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho digital learning academy board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho digital learning academy to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any Idaho digital learning academy funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(5) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho digital learning academy, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 3 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 2008. Section 2 of this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 2009.

CHAPTER 56
(H.B. No. 59)

AN ACT

RELATING TO COMPENSATION OF VICTIMS OF CRIMES; AMENDING SECTION 19-5307, IDAHO CODE, TO PROVIDE THAT A CERTAIN FELONY BE INCLUDED IN THE LIST OF CRIMES OF VIOLENCE THAT QUALIFY FOR A MONETARY FINE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-5307, Idaho Code, be, and the same is hereby amended to read as follows:

19-5307. FINES IN CASES OF CRIMES OF VIOLENCE. (1) Irrespective of any penalties set forth under state law, and in addition thereto, the court, at the time of sentencing or such later date as deemed necessary by the court, may impose a fine not to exceed five thousand dollars (\$5,000) against any defendant found guilty of any felony listed in subsection (2) of this section.

The fine shall operate as a civil judgment against the defendant, and shall be entered on behalf of the victim named in the indictment or information, or the family of the victim in cases of homicide or crimes against children, and shall not be subject to any distribution otherwise required in section 19-4705, Idaho Code. A fine created under this section shall be a separate written order in addition to any other sentence the court may impose.

The fine contemplated in this section shall be ordered solely as a punitive measure against the defendant, and shall not be based upon any requirement of showing of need by the victim. The fine shall not be used as a substitute for an order of restitution as contemplated in section 19-5304, Idaho Code, nor shall such an order of restitution or order of compensation entered in accordance with section 72-1018, Idaho Code, be offset by the entry of such fine.

A defendant may appeal a fine created under this section in the same manner as any other aspect of a sentence imposed by the court. The imposition of a fine created under this section shall not preclude the victim from seeking any other legal remedy; provided that in any civil action brought by or on behalf of the victim, the defendant shall be entitled to offset the amount of any fine imposed pursuant to this section against any award of punitive damages.

(2) The felonies for which a fine created under this section may be imposed are those described in:

Section 18-805, Idaho Code (Aggravated arson);

Section 18-905, Idaho Code (Aggravated assault);
Section 18-907, Idaho Code (Aggravated battery);
Section 18-909, Idaho Code (Assault with intent to commit a serious felony);
Section 18-911, Idaho Code (Battery with intent to commit a serious felony);
Section 18-913, Idaho Code (Felonious administration of drugs);
Section 18-1501, Idaho Code (Felony injury to children);
Section 18-1506, Idaho Code (Sexual abuse of a child under the age of sixteen);
Section 18-1506A, Idaho Code (Ritualized abuse of a child);
Section 18-1507, Idaho Code (Sexual exploitation of a child);
Section 18-1508, Idaho Code (Lewd conduct with a child under the age of sixteen);
Section 18-1508A, Idaho Code (Sexual battery of a minor child sixteen or seventeen years of age);
Section 18-4001, Idaho Code (Murder);
Section 18-4006, Idaho Code (Felony manslaughter);
Section 18-4014, Idaho Code (Administering poison with intent to kill);
Section 18-4015, Idaho Code (Assault with intent to murder);
Section 18-4502, Idaho Code (First degree kidnapping);
Section 18-5001, Idaho Code (Mayhem);
Section 18-5501, Idaho Code (Poisoning food, medicine or wells);
Section 18-6101, Idaho Code (Rape);
Section 18-6108, Idaho Code (Male rape);
Section 18-6501, Idaho Code (Robbery).

Approved March 25, 2009.

CHAPTER 57
(H.B. No. 78)

AN ACT

RELATING TO EDUCATION AND DISTRICT TRUSTEES; AMENDING SECTION 33-501, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF A PERSON AT-LARGE AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 33-504, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF A PERSON AT-LARGE, AND TO PROVIDE THAT CERTAIN APPOINTMENTS SHALL BE MADE BY THE BOARD OF COUNTY COMMISSIONERS AFTER A CERTAIN PERIOD.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-501, Idaho Code, be, and the same is hereby amended to read as follows:

33-501. BOARD OF TRUSTEES. Each school district shall be governed by a board of trustees. The board of trustees of each elementary school district shall consist of three (3) members, and the board of trustees of each other school district shall consist of five (5) members. Provided, however, that the board of trustees of any district which has had a change in its district boundaries subsequent to June 30, 1973, may consist of no fewer than five (5) nor more than nine (9) members if such provisions are included as part of an approved proposal to redefine and change trustee zones as provided in section 33-313, Idaho Code. The board of trustees of any district that has had a change in its district boundaries because of district consolidation on and after January 1, 2008, shall consist of five (5) members if two (2) districts consolidated or seven (7) members if three (3) or more districts consolidated. Except as otherwise provided by law, a school district trustee

shall be elected for a term of three (3) years or until the annual meeting of his district held during the year in which his term expires.

Each trustee shall at the time of his nomination and election, or appointment, be a school district elector of his district and a resident of the trustee zone from which nominated and elected, or appointed. In the event that a vacancy shall be declared as provided in section 33-504, Idaho Code, and the board of trustees is unable to appoint a trustee from the zone vacated after ninety (90) days, the board of trustees may appoint a person at-large from within the boundaries of the school district to serve as the trustee from the zone where the vacancy occurred.

Each trustee shall qualify for and assume office at the annual meeting of his school district next following his election, or, if appointed, at the regular meeting of the board of trustees next following such appointment. An oath of office shall be administered to each trustee, whether elected, ~~re-elected~~ reelected or appointed. Said oath may be administered by the clerk, or by a trustee, of the district, and the records of the district shall show such oath of office to have been taken, and by whom administered and shall be filed with the official records of the district.

SECTION 2. That Section 33-504, Idaho Code, be, and the same is hereby amended to read as follows:

33-504. VACANCIES ON BOARDS OF TRUSTEES. A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustee shall (a) die; (b) resign as trustee; (c) remove himself from his trustee zone of residence; (d) no longer be a resident or school district elector of the district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend four (4) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in section 33-439, Idaho Code.

Such declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions are determined to exist.

The board of trustees shall appoint to such vacancy a person qualified to serve as trustee of the school district provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the state superintendent of public instruction of the appointment. Such appointment shall be made within ninety (90) days of the declaration of vacancy. After ninety (90) days, if the board of trustees is unable to appoint a trustee from the zone vacated, the board of trustees may appoint a person at-large from within the boundaries of the school district to serve as the trustee from the zone where the vacancy occurred. Otherwise, after one hundred twenty (120) days from the declaration of vacancy, appointments shall be made by the board of county commissioners of the county in which the district is situate, or of the home county if the district be a joint district.

Any person appointed as herein provided shall serve until the annual meeting of school district trustees next following such appointment. At the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant and filled by appointment.

The elected trustee shall assume office at the annual meeting of the school district next following the election.

Approved March 25, 2009.

CHAPTER 58
(H.B. No. 137)

AN ACT

RELATING TO POWERS OF THE PARK AND RECREATION BOARD; AMENDING SECTION 67-4223, IDAHO CODE, TO PROVIDE BOARD AUTHORITY TO REGULATE FIREARM DISCHARGES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-4223, Idaho Code, be, and the same is hereby amended to read as follows:

67-4223. POWERS OF BOARD. The park and recreation board shall:

(~~a~~1) Adopt, amend or rescind rules as may be necessary for the proper administration of the provisions of sections 67-4218, et seq., Idaho Code, and the use and protection of park and recreational areas subject to its jurisdiction. A violation of any rule promulgated by the board pursuant to this provision which concerns the use and protection of park and recreation areas is an infraction.

(~~b~~2) Make expenditures for the acquisition, leasing, care, control, supervision, improvement, development, extension and maintenance of all lands under the control of the department and to make arrangements, agreements, contracts or commitments, which may or may not involve expenditures or transfer of funds, with the head of any state institution, department or agency for the improvement or development of lands or properties under the control of the board, or any other department or agency of the state of Idaho.

(~~e~~3) Appoint advisory, local and regional park and recreational councils, to consider, study and advise in the work of the department for the extension, development, use and maintenance of any areas which are to be considered as future park or recreational sites or which are designated as park recreational areas.

(~~e~~4) Appoint a six (6) member recreational vehicle advisory committee, who shall be compensated as provided in section 59-509(f), Idaho Code, and act in an advisory capacity to the board on matters relating to the development and improvement of recreational vehicle related facilities and services as provided in subsection (~~e~~5) of this section. Each member of the advisory committee shall be representative of recreational vehicle users with one (1) from each of the districts described in section 67-4221, Idaho Code. The terms of appointment shall be three (3) years, except that the initial appointees shall commence on the date of appointment and shall be of staggered lengths so that the term of two (2) members will expire annually.

(~~e~~5) Administer the funds derived from the recreational vehicle account established in section 49-448, Idaho Code, to provide financial assistance in the form of grants to public entities for the acquisition, lease, development, improvement, operations and maintenance of facilities and services designed to promote the health, safety and enjoyment of recreational vehicle users. Up to fifteen percent (15%) of the recreational vehicle account generated each year may be used by the department to defray recreational vehicle program administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the recreational vehicle account.

(~~f~~6) Cooperate with the United States and its agencies and local governments of the state for the purpose of acquiring, leasing, supervising, improving, developing, extending or maintaining lands which are designated as state parks, state monuments or state recreational areas and to secure agreements or contracts with the United States and its agencies or local governments of the state for the accomplishment of the purposes of sections 67-4218, et seq., Idaho Code.

(~~6~~7) Construct, lease or otherwise establish public park or recreational privileges, facilities and conveniences and to operate said recreational services and to make and collect reasonable charges for their use or to enter into contracts for their operation. The board may discount fees in order to offer use incentives to generate additional revenue for operation of the state park system. The net proceeds derived shall be credited to the park and recreation account established in section 67-4225, Idaho Code, and are hereby specifically appropriated to defray the cost of the public park or recreational services. The department is specifically authorized to enter into contracts with the United States and its agencies which require that the state expend any excess of revenue above expenses for improvements of the recreational or park area from which the excess was derived.

(~~1~~a) The board may provide for waiver of fees to any resident of Idaho who is a disabled veteran and whose disability is rated at one hundred percent (100%) or higher, permanent and total.

(~~2~~b) The board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any senior citizen who possesses a valid federal "golden age passport" or other equivalent successor, as issued by a federally-operated facility where an entrance fee is charged.

(~~3~~c) If any state recognizes senior citizens by offering a special park pass for use in that state, the board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any person who possesses such a state park pass.

(~~h~~8) Prepare, maintain and keep up-to-date a comprehensive plan for the provision of the outdoor recreational resources of the state; to develop, operate and maintain or enter into leases or agreements with local governments for the operation and maintenance of outdoor recreational areas and facilities of the state, and to acquire lands, waters and interests in lands and waters for such areas and facilities.

(~~i~~9) Apply to any appropriate agency or officer of the United States for participation by the department or a political subdivision of the state or the receipt of aid from any federal program respecting outdoor recreation. It may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable officials and agencies to perform their duties under such programs. In connection with obtaining the benefits of any program, the park and recreation board shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development and maintenance of outdoor recreational resources and facilities.

(~~j~~10) Obligate the state regarding the responsible management of any federal funds transferred to it for the purpose of any federal enactment and, in accordance with the exercise of this responsibility, the state hereby consents to be sued in any United States district court for the recovery of any federal funds that the responsible federal official, department or agency finds have been misused or disposed of contrary to the agreement with the federal official, department or agency or contrary to the provisions of federal enactment or applicable federal regulations.

(~~*~~11) Cooperate and contract with and receive and expend aid, donations and matching funds from the government of the United States, receive and expend funds from the STORE and to receive and expend donations from other sources to acquire, develop, operate and maintain outdoor recreational areas and facilities of the state and, when authorized or directed by any act of congress or any rule or regulation of any agency of the government of the

United States, to expend funds donated or granted to the state of Idaho by the federal government for such purposes.

Provided, however, the park and recreation board shall make no commitment or enter into any agreement pursuant to an exercise of authority under sections 67-4218, et seq., Idaho Code, until it has determined that sufficient funds are available to it for meeting the state's share, if any, of project costs. It is legislative intent that, to the extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of sections 67-4218, et seq., Idaho Code, such areas and facilities shall be publicly maintained for outdoor recreational purposes. The park and recreation board may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition and development projects involving participating federal-aid funds or state funds on behalf of any subdivision or subdivisions of this state. Provided, that the subdivision or subdivisions give necessary assurances to the park and recreation board that they have available sufficient funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision or subdivisions for public outdoor recreational use.

(±12) Establish, develop, supervise and maintain through cooperative agreement, lease, purchase or other arrangement the Idaho recreation trail system, with the advice of the coordinator created in section 67-4233, Idaho Code, and consistent with the goals of recreation, transportation and public access to outdoor areas.

(±13) Enter into agreements with cities, counties, recreation districts or other political subdivisions of the state to cost-effectively provide recreational facilities, opportunities and services to the citizens of the state.

(14) Have the authority to regulate firearm discharges in state parks for the protection of the public. However, this subsection (14) shall not apply to or affect a person discharging a firearm in the lawful defense of person, persons or property or to a person discharging a firearm in the course of lawful hunting. The possession or carrying of firearms is otherwise regulated by chapter 33, title 18, Idaho Code.

Approved March 25, 2009.

CHAPTER 59
(H.B. No. 99)

AN ACT

RELATING TO THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION; AMENDING SECTION 54-3607, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE WITHDRAWAL OF FUNDS FROM CERTAIN ACCOUNTS AND TO PROVIDE FOR INTERNAL ACCOUNTING CONTROLS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-3607, Idaho Code, be, and the same is hereby amended to read as follows:

54-3607. COMMISSION ACCOUNT. (1) The commission may accept tax receipts, grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act, which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act or as provided by law shall be paid to the commission and shall be deposited into a bank account in the name of the Idaho grape growers and

wine producers commission. Moneys in the bank account are continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter. Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by ~~two one (21)~~ officers designated by the commission. The commission shall establish and maintain an adequate and reasonable system of internal accounting controls. The internal accounting controls shall be written, approved and periodically reviewed by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

Approved March 26, 2009.

CHAPTER 60
(H.B. No. 100)

AN ACT

RELATING TO THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION; AMENDING SECTION 54-3610, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE IMPOSITION OF CERTAIN TAXES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-3610, Idaho Code, be, and the same is hereby amended to read as follows:

54-3610. IMPOSITION OF TAX AND PROVISION FOR LATE FEES. (1) From and after the first day of July, 1995, there is hereby levied and imposed a tax payable to the commission on the production of wine, and on all grapes grown in Idaho, for the production of wine, and on grapes purchased outside the state for production of wine in Idaho. The commission shall set the tax by rule and the minimum tax on each acre of to each grower for grapes grown in

Idaho shall ~~not exceed twenty five dollars (\$25.00) per acre~~ be set at one hundred dollars (\$100) annually. The tax on each winery for the production of wine shall not exceed three be set at a minimum of one hundred dollars (\$3100) annually. Grapes and grape juice purchased from producers outside Idaho shall be taxed ~~in an amount not to exceed twenty five dollars (\$25.00)~~ at a minimum of five dollars (\$5.00) per ton or per one hundred sixty-seven (167) gallons or any portion thereof. The purchasers of such grapes grown or grape juice produced outside the state shall be responsible for submitting the tax to the commission.

(2) Any person or firm who makes payment to the commission at a date later than that prescribed in this section or by rule may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed the rate of fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section.

Approved March 26, 2009.

CHAPTER 61
(H.B. No. 60)

AN ACT

RELATING TO WITNESSES IN CRIMINAL PROCEEDINGS; AMENDING CHAPTER 30, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3004A, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO ADMINISTRATIVE SUBPOENAS FOR CERTAIN RECORDS AND INFORMATION ISSUED TO A PROVIDER OF ELECTRONIC COMMUNICATION SERVICE OR A PROVIDER OF A REMOTE COMPUTING SERVICE BY THE PROSECUTING ATTORNEY OR ATTORNEY GENERAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 30, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3004A, Idaho Code, and to read as follows:

19-3004A. ADMINISTRATIVE SUBPOENA - ELECTRONIC COMMUNICATION AND REMOTE COMPUTING SERVICES. (1) A provider of an electronic communication service or remote computing service that is transacting or has transacted any business in the state shall disclose the following to a prosecuting attorney or the attorney general pursuant to an administrative subpoena issued by the prosecuting attorney or attorney general:

- (a) Records and information in its possession containing the name, address, local and long distance telephone connection records, or records of session times and durations, length of service, including the start date; and
- (b) Records and information in its possession containing the types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (c) Records and information in its possession relating to the means and source of payment for such service pertaining to a subscriber to or customer of such service.

The provider of an electronic communication service or remote computing service shall deliver the records to the prosecuting attorney or attorney general within fourteen (14) days of receipt of the subpoena.

(2) For the purpose of this section, the following definitions shall apply:

(a) "Electronic communication service" has the same meaning as provided in section 18-6701(13), Idaho Code.

(b) "Remote computing service" means the provision to the public of computer storage or processing service by means of an electronic communications system as defined in section 18-6701(12), Idaho Code.

(3) In order to obtain the records or information, the prosecuting attorney or attorney general shall certify on the face of the subpoena that there is reason to believe that the records or information being sought are relevant to a legitimate law enforcement investigation concerning a violation of section 18-1505B, 18-1506, 18-1506A, 18-1507, 18-1507A, 18-1508, 18-1508A, 18-1509, 18-1509A, 18-1515, 18-2202 or 18-6609, Idaho Code.

(4) No subpoena issued pursuant to this section shall demand records that disclose the content of electronic communications or subscriber account records disclosing internet locations which have been accessed including, but not limited to, websites, chat channels and news groups, but excluding servers used to initially access the internet. No recipient of a subpoena issued pursuant to this section shall provide any such content or records accessed, in response to the subpoena.

(5) On a motion made by the electronic communication service or remote computing service provider prior to the time for appearance or the production of documents under the subpoena issued pursuant to this section, a court of competent jurisdiction may quash or modify the administrative subpoena if the provider establishes that the records or other information requested are unusually voluminous in nature or if compliance with the subpoena would otherwise cause an undue burden on the service provider.

(6) No cause of action shall lie in any court against an electronic communication service or remote computing service provider, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of an administrative subpoena issued under this section.

(7) A person who is subpoenaed under this section and who fails to appear or produce materials as required by the subpoena, or who refuses to be sworn or give testimony, may be found to be in contempt of court. Proceedings to hold a person in contempt under this subsection may be brought in the county where the subpoena was issued.

(8) Nothing in this section shall limit the right of a prosecuting attorney or the attorney general to otherwise obtain records or information from a provider of electronic communication service or remote computing service pursuant to a search warrant, a court order or a grand jury or trial subpoena.

Law without signature.

CHAPTER 62
(H.B. No. 119)

AN ACT

RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3638, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DISTRIBUTION OF MONEYS TO DEVELOPERS OF CERTAIN RETAIL COMPLEXES AND TO PROVIDE A CORRECT CODE REFERENCE; REPEALING SECTION 63-3641, IDAHO CODE, RELATING TO TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN RETAILERS; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3641, IDAHO CODE, TO PROVIDE A SALES AND USE TAX REBATE TO DEVELOPERS OF CERTAIN RETAIL COMPLEXES, TO PROVIDE DEFINITIONS, TO PROVIDE PROVISIONS RELATING TO A WRITTEN CLAIM, TO PROVIDE FOR APPROVAL BY THE TAX COMMISSION, TO PROVIDE

PROVISIONS RELATING TO THE REBATE AMOUNT, TO PROVIDE THAT CERTAIN INFORMATION IS CONFIDENTIAL, TO PROVIDE FOR DEPOSIT OF CERTAIN MONEYS AND TO PROVIDE FOR A REBATE LIMIT; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3638, Idaho Code, be, and the same is hereby amended to read as follows:

63-3638. SALES TAX -- DISTRIBUTION. All moneys collected under this chapter, except as may otherwise be required in sections 63-3203 and 63-3709, Idaho Code, shall be distributed by the tax commission as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(2) Five million dollars (\$5,000,000) per year is continuously appropriated and shall be distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

(3) Four million eight hundred thousand dollars (\$4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-360528, Idaho Code.

(4) An amount equal to the sum required to be certified by the chairman of the Idaho housing and finance association to the state tax commission pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by the Idaho housing and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing and finance association shall be repaid for distribution under the provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(5) An amount equal to the sum required by the provisions of sections 63-709 and 63-717, Idaho Code, after allowance for the amount appropriated by section 63-718(3), Idaho Code, is continuously appropriated and shall be paid as provided by sections 63-709 and 63-717, Idaho Code.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) One dollar (\$1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle processed by the county assessor or the Idaho transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(9) Eleven and five-tenths percent (11.5%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the pro-

- portion that the population of that city bears to the population of all cities within the state; and
- (ii) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.
- (b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:
- (i) One million three hundred twenty thousand dollars (\$1,320,000) annually shall be distributed one forty-fourth ($1/44$) to each of the various counties; and
- (ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the population of the state;
- (c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:
- (i) Each city and county which received a payment under the provisions of section 63-3638 (e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.
- (ii) If the dollar amount of money available under this subsection (9) (c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.
- (iii) If the dollar amount of money available under this subsection (9) (c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.
- (iv) If the dollar amount of money available under this subsection (9) (c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and
- (d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:
- (i) Each such district which received a payment under the provisions of section 63-3638 (e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.
- (ii) If the dollar amount of money available under this subsection (9) (d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.
- (iii) If the dollar amount of money available under this subsection (9) (d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9) (d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such

districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1) (e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or discontinued, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or discontinuation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9) (d).

(vii) For purposes of this subsection (9) (d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(10) Amounts calculated in accordance with section 2, chapter 356, laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or discontinued, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or discontinuation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy minus .004 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code, provided that the result of these calculations shall not be less than zero (0). The result of these school district calculations shall be further increased by six percent (6%). For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

(11) Amounts necessary to pay refunds as provided in ~~subsection (3) of~~ section 63-3641, Idaho Code, to a developer of a retail ~~commercial complex whose stores sell tangible personal property or taxable services subject to the sales and use tax up to an aggregate total of thirty five million dollars (\$35,000,000) per project~~ shall be remitted to the demonstration pilot project fund created in ~~subsection (3) of~~ section 63-3641, Idaho Code, ~~and shall be specific to and accounted for by each project.~~

(12) Amounts calculated in accordance with subsection (4) of section 63-602KK, Idaho Code, for annual distribution to counties and other taxing districts for replacement of property tax on personal property tax exemptions pursuant to subsection (1) of section 63-602KK, Idaho Code, which amounts are continuously appropriated unless the legislature enacts a different appropriation for a particular fiscal year.

(13) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general fund.

SECTION 2. That Section 63-3641, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3641, Idaho Code, and to read as follows:

63-3641. REBATE OF SALES TAXES COLLECTED. (1) As provided in and subject to the limitations of this section, a developer of a retail complex shall receive a rebate of sales taxes collected and remitted to the state tax commission under this chapter by qualified retailers within the retail complex to reimburse the developer for project expenses incurred for the installation of approved transportation improvements.

(2) As used in this section:

(a) "Approved transportation improvements" means a highway project the cost of which is in excess of six million dollars (\$6,000,000) for the installation of an interchange from an interstate highway or expended on the improvement of a highway as defined in section 40-109(5), Idaho Code. To qualify as an approved highway improvement the developer of a retail complex must enter into an agreement with the Idaho transportation board and/or political subdivision. An approved highway improvement shall include those costs directly associated with the highway project but shall not include any improvement not within the right-of-way of the proposed public highway improvement, improvements not specifically authorized in the agreement entered into, or developer financed improvements required by state or local agencies as part of the permitting and development process not within the public highway right-of-way.

(b) "Political subdivision" means a city, county or highway district that receives highway funding pursuant to section 40-709, Idaho Code.

(c) "Qualified retailer" means a specific location within a retail complex operated by a retailer in regard to which the retailer:

(i) Has obtained a separate seller's permit pursuant to section 63-3620, Idaho Code, applicable only to that location and has collected sales or use taxes in regard to retail sales made at that location and has remitted all such taxes to the state tax commission with returns related to that permit;

(ii) Has been identified in the manner required by rules of the state tax commission as associated with the specific retail complex; and

- (iii) Did not directly or by any related party (as defined in section 63-3615A(2), Idaho Code) operate a retail business in the same location before construction of the retail complex.
 - (d) "Retail complex" means:
 - (i) One (1) or more buildings in a single location constructed by a developer applying for a rebate under this section;
 - (ii) Facilities reasonably related to the buildings, such as parking lots, sidewalks, lighting, traffic signs and accessory equipment; and
 - (iii) For which the developer has expended a minimum of four million dollars (\$4,000,000).
 - (e) "Retailer" has the same meaning as provided in section 63-3610, Idaho Code;
 - (f) "Retail sales" has the same meaning as that term is defined in section 63-3609, Idaho Code.
- (3) To obtain the rebate provided by this section, the developer of a retail complex shall file a written claim with the state tax commission.
- (a) The claim shall:
 - (i) Identify the location and boundaries of the retail complex;
 - (ii) Identify the qualified retailers making retail sales within the complex;
 - (iii) Include verification that the developer has met the expenditure requirements of paragraph (2) (d) (iii) of this section;
 - (iv) Include certification from the Idaho transportation department or political subdivision of the amount expended on the approved transportation improvements related to the retail complex;
 - (v) Contain such additional information as the state tax commission may require by rule.
 - (b) The claim shall be subject to such reasonable documentation and verification as the state tax commission may require.
 - (c) A developer of a retail complex must submit a claim under this subsection within two (2) years of the developer's last expenditure on approved transportation improvements.
- (4) (a) Upon approval by the state tax commission, the developer is entitled to receive a rebate of sixty percent (60%) of all sales and use taxes imposed by this chapter and remitted to the state tax commission after the date of approval by qualified retailers in the retail complex but not to exceed the lesser of:
- (i) The amount certified pursuant to subsection (3) (a) (iv) of this section; or
 - (ii) The limitation imposed by subsection (5) (c) of this section.
- (b) No interest shall be paid on the amounts rebated.
 - (c) All sales and use tax information remitted by retailers shall be deemed a trade secret, shall be confidential and shall not be disclosed by the state tax commission.
- (5) (a) When a retailer certifies to the state tax commission and the commission determines that the requirements of subsection (3) (a) (i), (ii) and (iii) of this section have been met, sixty percent (60%) of all sales and use taxes imposed by this chapter and remitted to the state tax commission after the date of approval by qualified retailers in the retail complex, shall be deposited into the demonstration pilot project fund, which is hereby created in the state treasury.
- (b) All moneys rebated shall be paid by the state tax commission from the demonstration pilot project fund in a timely manner not to exceed sixty (60) calendar days after receipt as funds are available in the demonstration pilot project fund. Payments shall be specific to and accounted for by each project.
 - (c) Once a total of thirty-five million dollars (\$35,000,000) has been paid in as a rebate on a particular approved transportation improve-

ment, no additional rebates shall be paid in regard to that approved transportation improvement.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 31, 2009.

CHAPTER 63
(H.B. No. 121)

AN ACT

RELATING TO INCOME TAX CHECKOFFS AND DONATIONS; AMENDING SECTION 63-3067A, IDAHO CODE, TO PROVIDE FOR DESIGNATION BY INDIVIDUALS OF A REFUND FOR AN OVERPAYMENT OF INCOME TAXES OR A DONATION BY INDIVIDUALS TO THE IDAHO FOOD BANK; AMENDING SECTION 63-3067B, IDAHO CODE, TO PROVIDE FOR DESIGNATION BY INDIVIDUALS OF A REFUND FOR AN OVERPAYMENT OF INCOME TAXES OR A DONATION BY INDIVIDUALS TO THE IDAHO FOOD BANK; AND AMENDING CHAPTER 8, TITLE 57, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 57-824, IDAHO CODE, TO CREATE THE IDAHO FOOD BANK FUND IN THE STATE TREASURY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3067A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067A. DESIGNATION BY INDIVIDUALS -- TRUST ACCOUNTS. (1) Every individual who:

(a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) of this section; or

(b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

(a) The fish and game set-aside account created by section 36-111, Idaho Code;

(b) The Idaho ag in the classroom account created by section 57-815, Idaho Code;

(c) The drug enforcement donation account created by section 57-816, Idaho Code;

(d) The children's trust fund created by section 39-6007, Idaho Code;

(e) The special olympics Idaho fund created in section 57-823, Idaho Code;

(f) The Idaho guard and reserve family support fund created by section 57-820, Idaho Code; ~~and~~

(g) The American red cross of greater Idaho fund created in section 57-821, Idaho Code; ~~and~~

(h) The Idaho food bank fund created by section 57-824, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for

collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

SECTION 2. That Section 63-3067B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067B. DESIGNATION BY INDIVIDUALS -- TRUST ACCOUNTS. (1) Every resident individual who:

- (a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) below; or
- (b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

- (a) The fish and game set-aside account created in section 36-111, Idaho Code;
- (b) The Idaho ag in the classroom account created in section 57-815, Idaho Code;
- (c) The drug enforcement donation account created in section 57-816, Idaho Code;
- (d) The children's trust fund created in section 39-6007, Idaho Code;
- (e) The special olympics Idaho fund created in section 57-823, Idaho Code;
- (f) The Alzheimer's disease services account created in section 57-819, Idaho Code;
- (g) The community forestry trust account created in section 38-136, Idaho Code;
- (h) The American red cross of greater Idaho fund created in section 57-821, Idaho Code, which donation shall be ten dollars (\$10.00) if made; ~~and~~
- (i) The veterans support fund created in section 65-209, Idaho Code; and
- (j) The Idaho food bank fund created in section 57-824, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

SECTION 3. That Chapter 8, Title 57, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 57-824, Idaho Code, and to read as follows:

57-824. IDAHO FOOD BANK FUND. There is hereby created in the state treasury, the Idaho food bank fund. Moneys in the fund shall be appropriated

to the Idaho food bank to provide food, information and support services to hungry people throughout this state through partnerships with nonprofit agencies, the food industry, government, volunteers, corporations and individuals by serving as a central clearinghouse for donated and purchased food.

Approved March 31, 2009.

CHAPTER 64
(H.B. No. 142)

AN ACT

RELATING TO THE UNIFORM PRINCIPAL AND INCOME ACT; AMENDING SECTION 68-10-409, IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE A TERM, TO CLARIFY LANGUAGE, TO REMOVE A REQUIREMENT FOR AN ALLOCATION TO INCOME NECESSARY TO OBTAIN THE MARITAL DEDUCTION, TO PROVIDE FOR ALLOCATION OF A PAYMENT MADE FROM A SEPARATE FUND TO QUALIFY FOR THE MARITAL DEDUCTION UNDER THE INTERNAL REVENUE CODE, TO PROVIDE FOR NONAPPLICATION, TO PROVIDE TRUSTEE DUTIES WITH REGARD TO INTERNAL INCOME AND ALLOCATION OF A SEPARATE FUND AND TO PROVIDE FOR DETERMINATION OF INTERNAL INCOME OF A SEPARATE FUND; AND AMENDING SECTION 68-10-505, IDAHO CODE, TO REVISE REQUIREMENTS FOR PAYMENT OF A TAX ON THE TRUST'S SHARE OF AN ENTITY'S TAXABLE INCOME AND TO REVISE REQUIREMENTS FOR AN ADJUSTMENT TO INCOME OR PRINCIPAL DUE TO A TAX DEDUCTION RECEIVED BY A TRUST FOR PAYMENTS MADE TO A BENEFICIARY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 68-10-409, Idaho Code, be, and the same is hereby amended to read as follows:

68-10-409. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS. (a) In this section:

(1) "~~p~~Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, ~~including~~. For purposes of subsections (d), (e), (f) and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, ~~or~~ a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment

is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

~~(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction~~ Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under section 2056(b) (7) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 2056(b) (7), as amended, has been made; or

(2) A trust that qualifies for the marital deduction under section 2056(b) (5) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 2056(b) (5), as amended.

(e) Subsections (d), (f) and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under section 2056(b) (7) (C) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 2056(b) (7) (C), as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent (4%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 7520, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payments to which section 68-10-410, Idaho Code, applies.

SECTION 2. That Section 68-10-505, Idaho Code, be, and the same is hereby amended to read as follows:

68-10-505. INCOME TAXES. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid ~~proportionately~~:

(1) From income to the extent that receipts from the entity are allocated only to income; ~~and~~

(2) From principal to the extent that+

~~(A) R~~ec receipts from the entity are allocated only to principal; ~~and~~

~~(B) The trust's share of the entity's taxable income exceeds the total receipts described in paragraphs (1) and (2) (A) of this subsection.~~

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

~~(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax. After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.~~

Approved April 1, 2009.

CHAPTER 65
(H.B. No. 185)

AN ACT

RELATING TO MIDWIFERY; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 54, TITLE 54, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE PURPOSE AND INTENT, TO DEFINE TERMS, TO CREATE THE BOARD OF MIDWIFERY, TO PROVIDE THE BOARD OF MIDWIFERY WITH POWERS AND DUTIES, TO PROVIDE FOR RULE-MAKING, TO PROVIDE FOR LICENSURE AND TO PROVIDE A PENALTY, TO PROVIDE QUALIFICATIONS FOR LICENSURE, TO PROVIDE EXEMPTIONS, TO PROVIDE FEES, TO PROVIDE CLIENT PROTECTION AND TO SPECIFY UNPROFESSIONAL CONDUCT, TO PROVIDE FOR DISCLOSURE AND RECORD KEEPING REQUIREMENTS AND TO PROVIDE FOR LICENSE RENEWAL REQUIREMENTS, TO PROVIDE IMMUNITY FROM VICARIOUS LIABILITY AND TO PROVIDE SEVERABILITY; AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF MIDWIFERY; AMENDING SECTION 67-2602, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF MIDWIFERY; TO PROVIDE BOARD OF MIDWIFERY REPORTING REQUIREMENTS; AND PROVIDING A SUN-SET DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 54, Title 54, Idaho Code, and to read as follows:

CHAPTER 54
MIDWIFERY

54-5401. LEGISLATIVE PURPOSE AND INTENT. The legislature finds and declares that the practice of midwifery has been a part of the culture and tradition of Idaho since before pioneer days and that for personal, religious and economic reasons some Idaho citizens choose midwifery care. The purpose of this chapter is to preserve the rights of families to deliver their children in a setting of their choice, to provide additional maternity care options for Idaho's families, to protect the public health, safety and welfare and to provide a mechanism to assure quality care.

54-5402. DEFINITIONS. As used in this chapter:

- (1) "Board" means the Idaho state board of midwifery.
- (2) "Bureau" means the Idaho state bureau of occupational licenses.

(3) "Certified professional midwife" or "CPM" means a person who is certified by the North American registry of midwives or any successor organization.

(4) "Client" means a woman under the care of a licensed midwife, as well as her fetus and newborn child.

(5) "Idaho midwifery council" or "IMC" means the professional organization representing midwives in Idaho.

(6) "Idahoans for midwives" or "IFM" means the Idaho consumer organization that promotes and supports midwifery care in Idaho.

(7) "Licensed midwife" means a person who holds a current license issued by the board pursuant to the provisions of this chapter to engage in the practice of midwifery, who shall be designated "L.M."

(8) "Midwifery education accreditation council" or "MEAC" means the organization established in 1991 and recognized by the U.S. department of education as an accrediting agency for midwifery education programs and institutions.

(9) "National association of certified professional midwives" or "NACPM" means the national organization for certified professional midwives.

(10) "NACPM essential documents" means the documents adopted by NACPM that identify the nature of and standards of practice for responsible midwifery practice.

(11) "North American registry of midwives" or "NARM" means the international certification agency that establishes and administers certification for the CPM credential.

(12) "Practice of midwifery" means providing maternity care for women and their newborns during the antepartum, intrapartum and postpartum periods. The postpartum period for both maternal and newborn care may not exceed six (6) weeks from the date of delivery.

54-5403. BOARD OF MIDWIFERY CREATED. (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses, a board of midwifery.

(2) The board shall consist of five (5) members appointed by the governor, three (3) of whom shall be licensed pursuant to this chapter, one (1) of whom shall be a licensed physician who is board certified in either obstetrics/gynecology or family medicine, maintains current hospital privileges and has provided primary maternity care for at least twenty (20) births in the twelve (12) months prior to the appointment and one (1) of whom shall be a member of the public with an interest in the rights of consumers of midwifery services.

(3) One (1) member of the initial board shall be appointed for a one (1) year term of office, one (1) member of the initial board shall be appointed for a two (2) year term of office, one (1) member of the initial board shall be appointed for a three (3) year term of office, one (1) member shall be appointed for a four (4) year term of office and one (1) member of the initial board shall be appointed for a five (5) year term of office. Thereafter, the term of office for each board member shall be five (5) years.

(4) In making appointments to the board, the governor's selection shall not be limited to nominations he receives; however, consideration shall be given to recommendations made by the Idaho midwifery council and Idahoans for midwives.

(5) The initial three (3) licensed midwife board members shall have at least three (3) years of experience in the practice of midwifery, shall hold current CPM certification and shall be eligible to become licensed pursuant to this chapter.

(6) The three (3) board members who are licensed midwives shall be licensed pursuant to this chapter, shall actively practice midwifery in the state of Idaho for the duration of their appointment and shall have been a

practicing midwife in the state of Idaho for at least three (3) years immediately preceding their appointment.

(7) In the event of the death, resignation or removal of any board member before the expiration of the term to which he is appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(8) Board members shall serve at the pleasure of the governor.

(9) Within thirty (30) days after its appointment, the initial board shall hold a meeting and elect a chairperson. The board shall meet at least annually thereafter, and may hold additional meetings at the call of the chairperson or at the written request of any two (2) members of the board. A majority of the board shall constitute a quorum. The vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board.

54-5404. BOARD OF MIDWIFERY -- POWERS AND DUTIES. The board shall have the authority and the responsibility to:

(1) Receive applications for licensure, determine the qualifications of persons applying for licensure, provide licenses to applicants qualified under this chapter and renew, suspend, revoke and reinstate licenses;

(2) Establish and collect fees for examination of applicants, for licensure and for renewal of licenses;

(3) Establish the minimum amount and type of continuing education to be required for each licensed midwife seeking renewal of the midwife's license;

(4) Investigate complaints against persons who are licensed under this chapter;

(5) Undertake, when appropriate, disciplinary proceedings and disciplinary action against persons licensed under this chapter;

(6) Promulgate and adopt rules, pursuant to chapter 52, title 67, Idaho Code, necessary to administer this chapter. To the degree they are consistent with this chapter, rules shall be consistent with the current job description for the profession published by NARM and consistent with standards regarding the practice of midwifery established by the NACPM or a successor organization;

(7) Authorize, by written agreement, the bureau of occupational licenses to act as agent in its interest; and

(8) Provide such other services and perform such other functions as are consistent with this chapter and necessary to fulfill its responsibilities.

54-5405. RULEMAKING. (1) The rules adopted by the board shall:

(a) Allow a midwife to obtain and administer, during the practice of midwifery, the following:

(i) Oxygen;

(ii) Oxytocin as a postpartum antihemorrhagic agent;

(iii) Injectable local anesthetic for the repair of lacerations that are no more extensive than second degree;

(iv) Antibiotics for group b streptococcus prophylaxis consistent with guidelines of the United States centers for disease control and prevention;

(v) Epinephrine administered via a metered dose auto-injector;

(vi) Intravenous fluids for stabilization of the woman;

(vii) Rho(d) immune globulin;

(viii) Vitamin K; and

(ix) Eye prophylactics to the baby.

(b) Prohibit the use of other legend drugs, except those of a similar nature and character as determined by the board to be consistent with the practice of midwifery; provided that, at least one hundred twenty (120) days' advance notice of the proposal to allow the use of such drugs

is given to the board of pharmacy and the board of medicine and neither board objects to the addition of such drugs to the midwifery formulary;

(c) Define a protocol for use by licensed midwives of drugs approved in paragraphs (a) and (b) of this subsection that shall include methods of obtaining, storing and disposing of such drugs and an indication for use, dosage, route of administration and duration of treatment;

(d) Define a protocol for medical waste disposal; and

(e) Establish scope and practice standards for antepartum, intrapartum, postpartum and newborn care that shall, at a minimum:

(i) Prohibit a licensed midwife from providing care for a client with a history of disorders, diagnoses, conditions or symptoms that include:

1. Placental abnormality;
2. Multiple gestation;
3. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first;
4. Birth under thirty-seven (37) weeks and after forty-two (42) completed weeks' gestational age;
5. A history of more than one (1) prior cesarean section, a cesarean section within eighteen (18) months of the current delivery or any cesarean section that was surgically closed with a classical or vertical uterine incision;
6. Rh or other blood group or platelet sensitization, hematological or coagulation disorders;
7. A body mass index of forty (40.0) or higher at the time of conception;
8. Prior chemotherapy and/or radiation treatment for a malignancy;
9. Previous pre-eclampsia resulting in premature delivery;
10. Cervical insufficiency; or
11. HIV positive status.

(ii) Prohibit a licensed midwife from providing care for a client with a history of the following disorders, diagnoses, conditions or symptoms unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a physician licensed pursuant to chapter 18, title 54, Idaho Code:

1. Diabetes;
2. Thyroid disease;
3. Epilepsy;
4. Hypertension;
5. Cardiac disease;
6. Pulmonary disease;
7. Renal disease;
8. Gastrointestinal disorders;
9. Previous major surgery of the pulmonary system, cardiovascular system, urinary tract or gastrointestinal tract;
10. Abnormal cervical cytology;
11. Sleep apnea;
12. Previous bariatric surgery;
13. Hepatitis; or
14. History of illegal drug use or excessive prescription drug use.

(iii) Require a licensed midwife to recommend that a client see a physician licensed under chapter 18, title 54, Idaho Code, and to document and maintain a record as required by section 54-5411, Idaho Code, if such client has a history of disorders, diagnoses, conditions or symptoms that include:

1. Previous complicated pregnancy;
2. Previous cesarean section;

3. Previous pregnancy loss in second or third trimester;
4. Previous spontaneous premature labor;
5. Previous pre-term rupture of membranes;
6. Previous pre-eclampsia;
7. Previous hypertensive disease of pregnancy;
8. Parvo;
9. Toxo;
10. CMV;
11. HSV;
12. Previous maternal/newborn group b streptococcus infection;
13. A body mass index of at least thirty-five (35.0) but less than forty (40.0) at the time of conception;
14. Underlying family genetic disorders with potential for transmission; or
15. Psychosocial situations that may complicate pregnancy.

(iv) Require that a licensed midwife shall facilitate the immediate transfer to a hospital for emergency care for disorders, diagnoses, conditions or symptoms that include:

1. Maternal fever in labor;
2. Suggestion of fetal jeopardy such as bleeding or meconium or abnormal fetal heart tones;
3. Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first;
4. Second stage labor after two (2) hours of initiation of pushing when the mother has had a previous cesarean section;
5. Current spontaneous premature labor;
6. Current pre-term premature rupture of membranes;
7. Current pre-eclampsia;
8. Current hypertensive disease of pregnancy;
9. Continuous uncontrolled bleeding;
10. Bleeding which necessitates the administration of more than two (2) doses of oxytocin or other antihemorrhagic agent;
11. Delivery injuries to the bladder or bowel;
12. Grand mal seizure;
13. Uncontrolled vomiting;
14. Coughing or vomiting of blood;
15. Severe chest pain; or
16. Sudden onset of shortness of breath and associated labored breathing.

A transfer of care shall be accompanied by the client's medical record, the licensed midwife's assessment of the client's current condition and a description of the care provided by the licensed midwife prior to transfer;

(v) Establish a written plan for the emergency transfer and transport required in subparagraph (iv) of this paragraph and for notifying the hospital to which a client will be transferred in the case of an emergency. If a client is transferred in an emergency, the licensed midwife shall notify the hospital when the transfer is initiated and accompany the client to the hospital if feasible, or communicate by telephone with the hospital if unable to be present personally, and shall provide the client's medical record. The record shall include the client's name, address, list of diagnosed medical conditions, list of prescription or over the counter medications regularly taken, history of previous allergic reactions to medications, if feasible the client's current medical condition and description of the care provided by the midwife and next of kin contact information.

(f) Establish and operate a system of peer review for licensed midwives that shall include, but not be limited to, the appropriateness, quality, utilization and the ethical performance of midwifery care.

(2) The rules adopted by the board may not:

(a) Require a licensed midwife to have a nursing degree or diploma;

(b) Except as a condition imposed by disciplinary proceedings by the board, require a licensed midwife to practice midwifery under the supervision of another health care provider;

(c) Except as a condition imposed in disciplinary proceedings by the board, require a licensed midwife to enter into an agreement, written or otherwise, with another health care provider;

(d) Limit the location where a licensed midwife may practice midwifery;

(e) Allow a licensed midwife to use vacuum extraction or forceps as an aid in the delivery of a newborn;

(f) Grant a licensed midwife prescriptive privilege;

(g) Allow a licensed midwife to perform abortions.

54-5406. LICENSURE -- PENALTY. (1) The board shall grant a license to any person who submits a completed application, pays the required license fee as established by the board and meets the qualifications set forth in section 54-5407, Idaho Code.

(2) All licenses issued under this chapter shall be for a term of one (1) year and shall expire on the birthday of the licensee unless renewed in the manner prescribed by rule. Except as set forth in this chapter, rules governing procedures and conditions for license renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(3) It is a misdemeanor for any person to assume or use the title or designation "licensed midwife," "L.M." or any other title, designation, words, letters, abbreviations, sign, card or device to indicate to the public that such person is licensed to practice midwifery pursuant to this chapter unless such person is so licensed. Any person who pleads guilty to or is found guilty of a second or subsequent offense under this subsection (3) shall be guilty of a felony.

(4) Except as provided in section 54-5408, Idaho Code, on and after July 1, 2010, it shall be a misdemeanor for any person to engage in the practice of midwifery without a license. Any person who pleads guilty to or is found guilty of a second or subsequent offense under this subsection (4) shall be guilty of a felony.

54-5407. QUALIFICATIONS FOR LICENSURE. (1) A person shall be eligible to be licensed as a midwife if the person:

(a) Provides proof of current certification as a CPM by NARM or a successor organization;

(b) Files a board approved application for licensure and pays the required fees; and

(c) Provides documentation of successful completion of board approved MEAC accredited courses in pharmacology, the treatment of shock/IV therapy and suturing specific to midwives.

(2) For any midwife who has been continuously practicing midwifery in Idaho for at least five (5) years prior to July 1, 2009, the qualifications for licensure in subsection (1) (a) of this section may be waived by the board if such midwife provides the following documentation to the board:

(a) Primary attendance at seventy-five (75) births within the past ten (10) years, ten (10) of which occurred in the two (2) years immediately preceding the application for licensure; and

(b) In addition to the completion of the courses listed in subsection (1) (c) of this section, successful completion of board approved courses in CPR and neonatal resuscitation; and

(c) Complete practice data for the two (2) years preceding the application for licensure, on a form provided by the board.

(3) Any midwife who wishes to qualify for the waiver provided in subsection (2) of this section shall apply for licensure and provide the required documentation before July 1, 2010.

54-5408. EXEMPTIONS. This chapter shall not apply to any of the following:

(1) Certified nurse midwives authorized under the board of nursing to practice in Idaho, unless a certified nurse midwife chooses to become a licensed midwife. Certified nurse midwives who are licensed midwives shall be subject to the provisions of chapter 14, title 54, Idaho Code, as well as to the provisions of this chapter;

(2) Student midwives in training under the direct supervision of licensed midwives as required by NARM;

(3) A person, in good faith, engaged in the practice of the religious tenets of any church or religious act where no fee is contemplated, charged or received, whose license to practice midwifery has not been revoked and who has not plead guilty to or been found guilty of a felony for a violation of the provisions of section 54-5406, Idaho Code;

(4) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;

(5) A person rendering aid in an emergency where no fee for the service is contemplated, charged or received;

(6) A person administering care to a member of such person's family;

(7) The practice of a profession by individuals who are licensed, certified or registered under other laws of this state and are performing services within the authorized scope of practice.

54-5409. FEES. (1) All fees received under the provisions of this chapter shall be paid to the department of self-governing agencies, bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund. All costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund. In no case may any salary, expense or other obligation of the board be charged against the general fund.

(2) The fee for licensure may not exceed one thousand dollars (\$1,000).

54-5410. CLIENT PROTECTION -- UNPROFESSIONAL CONDUCT. A licensed midwife or applicant for licensure, renewal or reinstatement may not:

(1) Disregard a client's dignity or right to privacy as to her person, condition, possessions or medical record;

(2) Breach any legal requirement of confidentiality with respect to a client, unless ordered by a court of law;

(3) Submit a birth certificate known by the person to be false or fraudulent, or willfully make or file false or incomplete reports or records in the practice of midwifery;

(4) Fail to provide information sufficient to allow a client to give fully informed consent;

(5) Engage in the practice of midwifery while impaired because of the use of alcoholic beverages or drugs; and

(6) Violate any other standards of conduct as determined by the board in rules adopted for the regulation of the practice of midwifery.

54-5411. DISCLOSURE AND RECORD KEEPING -- LICENSE RENEWAL. (1) Before initiating care, a licensed midwife shall obtain a signed informed consent agreement from each client, acknowledging receipt, at minimum, of the following:

(a) The licensed midwife's training and experience;

- (b) Instructions for obtaining a copy of the rules adopted by the board pursuant to this chapter;
- (c) Instructions for obtaining a copy of the NACPM essential documents and NARM job description;
- (d) Instructions for filing complaints with the board;
- (e) Notice of whether or not the licensed midwife has professional liability insurance coverage;
- (f) A written protocol for emergencies, including hospital transport that is specific to each individual client;
- (g) A description of the procedures, benefits and risks of home birth, primarily those conditions that may arise during delivery; and
- (h) Any other information required by board rule.

(2) All licensed midwives shall maintain a record of all signed informed consent agreements for each client for a minimum of nine (9) years after the last day of care for such client.

(3) Before providing care for a client who has a history of disorders, diagnoses, conditions or symptoms identified in section 54-5405(1) (e) (ii), Idaho Code, the licensed midwife shall provide written notice to the client that the client shall obtain care from a physician licensed pursuant to chapter 18, title 54, Idaho Code, as a condition to her eligibility to obtain maternity care from the licensed midwife. Before providing care for a client who has a history of disorders, diagnoses, conditions or symptoms identified in section 54-5405(1) (e) (iii), Idaho Code, or who has had a previous cesarean section, the licensed midwife shall provide written notice to the client that the client is advised to consult with a physician licensed pursuant to chapter 18, title 54, Idaho Code, during her pregnancy. The midwife shall obtain the client's signed acknowledgment of receipt of said notice.

(4) Any licensed midwife submitting an application to renew a license shall compile and submit to the board complete practice data for the twelve (12) months immediately preceding the date of the application. Such information shall be provided in form and content as prescribed by rule of the board and shall include, but not be limited to:

- (a) The number of clients to whom care has been provided by the licensed midwife;
- (b) The number of deliveries performed by the licensed midwife;
- (c) The apgar scores of the infants delivered by the licensed midwife;
- (d) The number of prenatal transfers;
- (e) The number of transfers during labor, delivery and immediately following birth;
- (f) Any perinatal deaths; and
- (g) Other morbidity statistics as required by the board.

54-5412. IMMUNE FROM VICARIOUS LIABILITY. No physician, hospital, emergency room personnel, emergency medical technician or ambulance personnel shall be liable in any civil action arising out of any injury resulting from an act or omission of a licensed midwife, even if the health care provider has consulted with or accepted a referral from the licensed midwife. A physician who consults with a licensed midwife but who does not examine or treat a client of the midwife shall not be deemed to have created a physician-patient relationship with such client.

54-5413. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

SECTION 2. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of dentistry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board, as provided by chapter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code; ~~and~~ the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code; and the board of midwifery, as provided by chapter 54, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; manufactured home advisory board, chapter 21, title 44, Idaho Code; electrical board, chapter 10, title 54, Idaho Code; public works contractors board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code; and modular buildings, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 3. That Section 67-2602, Idaho Code, be, and the same is hereby amended to read as follows:

67-2602. BUREAU OF OCCUPATIONAL LICENSES. (1) The bureau of occupational licenses created in the department of self-governing agencies by section 67-2601, Idaho Code, shall be empowered, by written agreement between the bureau and each agency for which it provides administrative or other services as provided by law, to provide such services for the board of acupuncture, board of architectural examiners, board of barber examiners, board of chiropractic physicians, board of cosmetology, counselor licensing board, state board of dentistry, speech and hearing services licensure board, physical therapy licensure board, board of landscape architects, liquefied petroleum gas safety board, board of morticians, board of naturopathic medical examiners, board of examiners of nursing home administrators, board of optometry, board of podiatrists, board of psychologist examiners, real estate appraiser board, board of examiners of residential care facility administrators, board of social work examiners, board of midwifery and such other professional and occupational licensing boards or commodity commissions as may request such services. The bureau may charge a reasonable fee for such services provided any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the bureau of occupational licenses, each board member shall hold office until a successor has been duly appointed and qualified.

(3) The department of self-governing agencies, by and through the bureau of occupational licenses, shall be empowered to provide administrative or other services for the administration of chapter 48, title 54, Idaho Code, to issue, suspend, revoke or refuse to renew licenses and certificates, to issue subpoenas, to prescribe and impose fees and to assess administrative penalties pursuant to the provisions of chapter 48, title 54, Idaho Code.

SECTION 4. The Board of Midwifery shall report on the status of the board and the practice of licensed midwifery in Idaho to the Second Regular Session of the Sixty-Second Legislature of the state of Idaho, in 2014.

SECTION 5. The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2014.

Approved April 1, 2009.

CHAPTER 66
(H.B. No. 41)

AN ACT

RELATING TO THE INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES; AMENDING SECTION 41-4201, IDAHO CODE, TO INCLUDE GROUP SUPPLEMENTAL DISABILITY INSURANCE POLICIES WITHIN THE PURPOSE OF THE ACT AND TO REVISE TERMINOLOGY; AMENDING SECTION 41-4202, IDAHO CODE, TO REVISE DEFINITIONS AND TO REVISE TERMINOLOGY; AMENDING SECTION 41-4203, IDAHO CODE, TO PROVIDE FOR STANDARDS FOR POLICY PROVISIONS FOR GROUP SUPPLEMENTAL POLICIES OF DISABILITY INSURANCE, TO REVISE TERMINOLOGY, TO CORRECT CODIFIER'S ERRORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4204, IDAHO CODE, TO PROVIDE FOR GROUP SUPPLEMENTAL POLICY MINIMUM STANDARDS FOR BENEFITS, TO REVISE COVERAGES SUBJECT TO MINIMUM STANDARDS FOR BENEFITS AND TO REVISE TERMINOLOGY; AMENDING SECTION 41-4205, IDAHO CODE, TO PROVIDE OUTLINE OF COVERAGE FOR GROUP SUPPLEMENTAL DISABILITY INSURANCE POLICIES, TO PROVIDE LIMITATIONS WHEN SPECIFIED POLICIES SHALL BE OFFERED, CONTINUED OR RENEWED, TO REVISE THE STATEMENT INCLUDED IN OUTLINE OF COVERAGE, TO REVISE TERMINOLOGY, TO CORRECT CODIFIER'S ERRORS AND TO MAKE TECHNICAL CORRECTIONS; AND REPEALING SECTION 41-4206, IDAHO CODE, RELATING TO PREEXISTING CONDITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-4201, Idaho Code, be, and the same is hereby amended to read as follows:

41-4201. PURPOSE. The purpose of this act shall be to provide reasonable standardization and simplification of terms and coverages of individual disability insurance policies, group supplemental disability insurance policies, nongroup subscriber contracts of nonprofit hospitals, medical and dental service associations, and nongroup subscriber contracts of ~~health maintenance~~ managed care organizations to facilitate public understanding and comparison, to eliminate provisions contained in individual disability insurance policies, group supplemental disability insurance policies, nongroup subscriber contracts of nonprofit hospital, medical and dental service associations, and nongroup subscriber contracts of ~~health maintenance~~ managed care organizations which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of disability coverages.

SECTION 2. That Section 41-4202, Idaho Code, be, and the same is hereby amended to read as follows:

41-4202. DEFINITIONS. (1) "Form" includes but is not limited to policies, contracts, certificates, riders, endorsements, and applications as provided in sections 41-1812, ~~and 41-3419~~ and 41-3915, Idaho Code.

(2) "Disability Insurance" means insurance written under chapter 21, title 41, Idaho Code, supplemental disability insurance written under chapter 22, title 41, Idaho Code, coverages written under chapter 34, title 41, Idaho Code, and coverages written under chapter 39, ~~of title 41, Idaho Code~~. For purposes of this act, nonprofit hospital, medical and dental

service associations, and ~~health maintenance~~ managed care organizations shall be deemed to be engaged in the business of insurance.

(3) "Policy" means the entire contract between the insurer and the insured, including the policy, certificates, riders, endorsements, and the application, if attached, and also includes nongroup subscriber contracts issued by nonprofit hospital, medical and dental service associations, and nongroup subscriber contracts issued by ~~health maintenance~~ managed care organizations.

SECTION 3. That Section 41-4203, Idaho Code, be, and the same is hereby amended to read as follows:

41-4203. STANDARDS FOR POLICY PROVISIONS. (1) The director shall issue rules, ~~and regulations~~, subject to chapter 52, title 67, Idaho Code, to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of disability insurance, ~~and group supplemental policies of disability insurance~~, nongroup subscriber contracts of nonprofit hospital, medical and dental service associations and nongroup subscriber contracts of ~~health maintenance~~ managed care organizations which shall be in addition to and in accordance with applicable laws of this state, which may cover but shall not be limited to:

- (a) ~~Terms or renewability~~_Ti
- (b) ~~Initial and subsequent conditions of eligibility~~_Ti
- (c) ~~Non duplication of coverage provisions~~_Ti
- (d) ~~Coverage of dependents~~_Ti
- (e) ~~Pre-existing conditions~~_Ti
- (f) ~~Termination of insurance~~_Ti
- (g) ~~Probationary periods~~_Ti
- (h) ~~Limitations~~_Ti
- (i) ~~Exceptions~~_Ti
- (j) ~~Reductions~~_Ti
- (k) ~~Elimination periods~~_Ti
- (l) ~~Requirements for replacement~~_Ti
- (m) ~~Recurrent conditions~~_Ti and
- (n) ~~The definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable~~ noncancelable.

(2) The director may issue rules ~~and regulations~~ that specify prohibited policy provisions not otherwise specifically authorized by statute which in the opinion of the director are unjust, unfair, or unfairly discriminatory to the ~~policy holder~~ policyholder, any person insured under the policy, or beneficiary.

SECTION 4. That Section 41-4204, Idaho Code, be, and the same is hereby amended to read as follows:

41-4204. MINIMUM STANDARDS FOR BENEFITS. (1) The director shall issue rules, ~~and regulations~~, subject to chapter 52, title 67, Idaho Code, to establish minimum standards for benefits under each of the following categories of coverage in individual policies, group supplemental policies, nongroup subscriber contracts of nonprofit hospital, medical and dental service associations, and nongroup subscriber contracts of ~~health maintenance~~ managed care organizations other than conversion policies issued pursuant to a contractual conversion privilege under a group policy of disability insurance:

- (a) Basic hospital expense coverage;
- (b) Basic medical-surgical and dental expense coverage;

- (c) Hospital confinement indemnity coverage;
- (d) Major medical expense coverage;
- (e) Disability income protection coverage;
- (f) Accident only coverage; and
- (g) Specified disease, ~~or specified accident coverage.~~

(2) Nothing in this section shall preclude the issuance of any policy or contract which combines two (2) or more of the categories of coverage enumerated in paragraphs (a) through (g) of subsection (1) of this section.

(3) No policy or contract shall be delivered or issued for delivery in this state which does not meet the prescribed minimum standards for the categories of coverage listed in paragraphs (a) through (g) of subsection (1) of this section, which are contained within the policy or contract unless the director finds such policy or contract will be in the public interest and such policy or contract meets the requirements set forth in section 41-1813, Idaho Code.

(4) The director shall prescribe the method of identification of policies and contracts based upon coverages provided.

SECTION 5. That Section 41-4205, Idaho Code, be, and the same is hereby amended to read as follows:

41-4205. OUTLINE OF COVERAGE. (1) In order to provide for full and fair disclosure in the sale of individual disability insurance policies, ~~or group supplemental disability insurance policies,~~ nongroup subscriber contracts of a nonprofit hospital, medical or dental service association, or nongroup subscriber contracts of ~~health-maintenance managed care~~ organizations, no such policy or contract shall be offered, delivered, ~~or~~ issued for delivery, continued or renewed in this state unless:

(a) ~~In~~ the case of a direct response insurance product, the outline of coverage described in subsection (2) of this section accompanies the policy;

(b) ~~In~~ all other cases, the outline of coverage described in subsection (2) of this section is delivered to the applicant at the time application is made and an acknowledgment of receipt of certificate of delivery of such outline is provided the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and clearly state that it is not the policy or contract for which application was made.

(2) The director shall prescribe the format and content of the outline of coverage required by subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) A statement identifying the applicable category or categories of coverage provided by the policy or contract as prescribed in section 41-4204, ~~of this act~~ Idaho Code;

(b) A description of the principal benefits and coverage provided in the policy or contract;

(c) A statement of the exceptions, reductions and limitations contained in the policy or contract;

(d) A statement of the renewal provisions including any reservation by the insurer, ~~or~~ nonprofit hospital, medical or dental service association, ~~or health-maintenance managed care~~ organization of a right to change premiums;

(e) A statement that the outline is a summary of the policy, certificate or contract issued or applied for and that the policy, certificate or contract should be consulted to determine governing contractual provisions.

SECTION 6. That Section 41-4206, Idaho Code, be, and the same is hereby repealed.

Approved April 1, 2009.

CHAPTER 67
(H.B. No. 55)

AN ACT

RELATING TO LICENSES FOR NURSING; AMENDING SECTION 54-1407, IDAHO CODE, TO PROVIDE AN ALTERNATIVE WAY TO QUALIFY FOR A PRACTICAL NURSING LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1408, IDAHO CODE, TO PROVIDE AN ALTERNATIVE WAY TO QUALIFY FOR A PROFESSIONAL NURSING LICENSE AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1407, Idaho Code, be, and the same is hereby amended to read as follows:

54-1407. LICENSE FOR PRACTICAL NURSING. (1) Qualifications. To qualify for a license to practice practical nursing a person must:

(a) Have successfully completed the basic curriculum of an approved ~~eleven (11) month~~ practical nursing education program or its equivalent; and

(b) Satisfy one (1) of the following requirements:

(i) Pass an examination adopted and used by the board to measure knowledge and judgment essential for the safe practice of practical nursing; or

(ii) ~~h~~Have a practical nursing license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign country; or

(iii) Have a practical nursing license in good standing, without restriction or limitation, issued by another state, territory or foreign country and meet established board requirements; and

(c) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice practical nursing upon payment of a license fee to the board in an amount designated by the board not to exceed one hundred fifty dollars (\$150).

SECTION 2. That Section 54-1408, Idaho Code, be, and the same is hereby amended to read as follows:

54-1408. LICENSE FOR PROFESSIONAL NURSING. (1) Qualifications. To qualify for a license to practice professional nursing, a person must:

(a) Have successfully completed the basic curriculum of an approved professional nursing education program or its equivalent; and

(b) Satisfy one (1) of the following requirements:

(i) Pass an examination adopted and used by the board to measure knowledge and judgment essential for the safe practice of professional nursing; or

(ii) ~~h~~Have a professional or registered nurse license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign country; or

(iii) Have a professional or registered nurse license in good standing, without restriction or limitation, issued by another state, territory or foreign country and meet established board requirements; and

(c) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice professional nursing upon payment of a license fee to the board in an amount designated by the board not to exceed two hundred dollars (\$200).

Approved April 1, 2009.

CHAPTER 68

(H.B. No. 70, As Amended in the Senate)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION ACT; AMENDING SECTION 18-8310, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE RELEASE OF A PERSON FROM REGISTRATION REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8310, Idaho Code, be, and the same is hereby amended to read as follows:

18-8310. RELEASE FROM REGISTRATION REQUIREMENTS -- EXPUNGEMENT. (1) Any person, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the person was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the person shall be exempted from the duty to register as a sexual offender. In the petition the petitioner shall:

(a) Provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304, Idaho Code;

(b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in section 18-8304, Idaho Code;

(c) Provide proof of service of such petition upon the county prosecuting attorney for the county in which the application is made and upon the central registry; and

(d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender.

(2) The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days' prior notice of the hearing to the petitioner, and the county prosecuting attorney and the central registry. The central registry may appear or participate as a party.

(3) The court may exempt the petitioner from the reporting requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence and upon written findings of fact and conclusions of law by the court that:

(a) The court has reviewed the petitioner's criminal history and has determined that petitioner is not a recidivist, has not been convicted of an aggravated offense or has not been designated as a violent sexual predator; and

(b) ~~†~~The petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304, Idaho Code.

~~(24)~~ Concurrent with the entry of any order exempting the petitioner from the reporting requirement, the court may further order that any information regarding the petitioner be expunged from the central registry.

Approved April 1, 2009.

CHAPTER 69
(H.B. No. 75)

AN ACT

RELATING TO LIFE SETTLEMENTS; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 41-1950 THROUGH 41-1965, IDAHO CODE, TO PROVIDE A SHORT TITLE AND SCOPE, TO DEFINE TERMS, TO REQUIRE LICENSURE, TO MANDATE THE FILING OF CONTRACTS AND DISCLOSURE STATEMENTS, TO DESCRIBE REPORTING REQUIREMENTS AND TO PROTECT PRIVACY, TO PROVIDE FOR THE EXAMINATION OF LICENSEES, TO PROVIDE FOR RECORDKEEPING REQUIREMENTS, TO SPECIFY DISCLOSURES TO BE MADE TO THE OWNER UPON APPLICATION, TO SPECIFY REQUIRED DISCLOSURES, TO REQUIRE CERTAIN NOTICES, TO SET FORTH GENERAL RULES GOVERNING THE TRANSACTION OF LIFE SETTLEMENTS, TO DESCRIBE PERMISSIBLE LIFE SETTLEMENTS AND RELATED DOCUMENTATION REQUIREMENTS, TO PROHIBIT CERTAIN PRACTICES AND CONFLICTS OF INTEREST, TO PROHIBIT MISLEADING ADVERTISING, TO PROVIDE PENALTIES, TO AUTHORIZE RULEMAKING AND TO PROVIDE FOR SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 19, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 41-1950 through 41-1965, Idaho Code, and to read as follows:

41-1950. SHORT TITLE AND SCOPE. (1) Sections 41-1950 through 41-1965, Idaho Code, may be cited as the "Life Settlements Act."

(2) Nothing contained herein is intended to abrogate or conflict with the Idaho uniform securities act contained in chapter 14, title 30, Idaho Code, or supersede the duty of persons to comply with that or any other applicable law. Given the combined interest and regulation of life settlements by the department and the department of finance, the director and the director of the department of finance should cooperate in the exercise of discretionary acts and enforcement of the applicable laws within their respective authority and responsibility.

(3) Unless clearly inapplicable, other provisions and chapters of title 41, Idaho Code, apply to licensees and persons subject to sections 41-1950 through 41-1965, Idaho Code, including, but not limited to, chapters 1 through 5, 10, 13, 18 and 19, title 41, Idaho Code. Specifically, section 41-220, Idaho Code, applies to licensees under sections 41-1950 through 41-1965, Idaho Code.

41-1951. DEFINITIONS. In sections 41-1950 through 41-1965, Idaho Code:

(1) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise,

bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a life settlement contract.

(2) "Business of life settlements" means an activity involved in, but not limited to, the offering to enter into, soliciting, negotiating, procuring or effectuating a life settlement contract. The transaction of the business of life settlements is within the scope of the transaction of the business of insurance as provided in section 41-112, Idaho Code.

(3) "Chronically ill" means:

(a) Being unable to perform at least two (2) activities of daily living such as eating, toileting, transferring, bathing, dressing or continence; or

(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(4) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

(a) Whose principal activity related to the transaction is providing funds to effect the life settlement or purchase of one (1) or more settled policies; and

(b) Who has an agreement in writing with one (1) or more licensed life settlement providers to finance the acquisition of life settlement contracts.

"Financing entity" does not include a nonaccredited investor. An "accredited investor" is defined by rule 501 of regulation D, 17 CFR 230.501(a).

(5) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to section 41-1008, Idaho Code.

(6) "Life settlement broker" or "broker" means a person who, working exclusively on behalf of an owner and for a fee, commission or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and one (1) or more life settlement providers or one (1) or more life settlement brokers. Notwithstanding the manner in which the life settlement broker is compensated, a life settlement broker is deemed to represent only the owner, and not the insurer or the life settlement provider, and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner. Nothing in this definition reduces or impairs the scope of the definitions in section 30-14-102, Idaho Code, including, but not limited to, agent, broker-dealer, investment adviser, and investment adviser representative. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or purchaser.

(7) "Life settlement contract" means an agreement between an owner and a life settlement provider or any affiliate, as that term is defined in section 41-3801(1), Idaho Code, of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the owner's present or future assignment, transfer, sale, hypothecation, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. Nothing in this definition reduces or impairs the scope of the definition of security contained in section 30-14-102(28), Idaho Code.

(a) "Life settlement contract" includes a premium finance loan made for a life insurance policy on or before the date of issuance of the policy where one (1) or more of the following conditions apply:

- (i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
 - (ii) The owner or the insured receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or
 - (iii) The owner or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- (b) "Life settlement contract" includes the transfer, for compensation or value, of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other person was formed or availed of for the principal purpose of acquiring one (1) or more life insurance policies which life insurance contract insures the life of a person residing in this state.
- (c) "Life settlement contract" does not include any of the following:
- (i) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;
 - (ii) A loan, the proceeds of which are used solely to pay:
 - (A) Premiums for the policy; and
 - (B) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;
 - (iii) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under sections 41-1950 through 41-1965, Idaho Code;
 - (iv) A loan made by a lender that does not violate the Idaho consumer credit code, provided that the premium finance loan is not described in paragraph (a) of this subsection;
 - (v) An agreement where all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
 - (vi) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
 - (vii) A bona fide business succession planning arrangement:
 - (A) Between one (1) or more shareholders in a corporation or between a corporation and one (1) or more of its shareholders or one (1) or more trusts established by its shareholders;
 - (B) Between one (1) or more partners in a partnership or between a partnership and one (1) or more of its partners or one (1) or more trusts established by its partners; or
 - (C) Between one (1) or more members in a limited liability company or between a limited liability company and one (1) or more of its members or one (1) or more trusts established by its members;

(viii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
(ix) Any other contract, transaction or arrangement exempted from the definition of life settlement contract by the director based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by sections 41-1950 through 41-1965, Idaho Code.

(8) "Life settlement provider" or "provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner resident in this state. Nothing in this definition reduces or impairs the scope of the definitions of section 30-14-102, Idaho Code, including, but not limited to, agent, broker-dealer, investment adviser, and investment adviser representative. "Life settlement provider" does not include:

- (a) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;
- (b) A premium finance company making premium finance loans that takes an assignment of a life insurance policy solely as collateral for a loan;
- (c) The insurer of the life insurance policy;
- (d) An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a life settlement provider, purchaser, financing entity, special purpose entity or related provider trust;
- (e) A financing entity;
- (f) A special purpose entity;
- (g) A related provider trust; or
- (h) Any other person that the director determines is not the type of person intended to be covered by the definition of life settlement provider.

(9) "Owner" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of sections 41-1950 through 41-1965, Idaho Code, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

- (a) If there is more than one (1) owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one (1) owner agreed upon in writing by all the owners.

(b) "Owner" does not include:

- (i) A licensee under sections 41-1950 through 41-1965, Idaho Code, including a life insurance producer acting as a life settlement broker pursuant to sections 41-1950 through 41-1965, Idaho Code;
- (ii) Qualified institutional buyer as defined, respectively, in rule 144A, 17 CFR 230.144A, promulgated under the federal securities act of 1933, 15 USC section 77a et seq., as amended;
- (iii) A financing entity;
- (iv) A special purpose entity; or
- (v) A related provider trust.

(10) "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(11) "Premium finance loan" means a loan made primarily for the purpose of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.

(12) "Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the director as if those records and files were maintained directly by the licensed life settlement provider.

(13) "Settled policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

(14) "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

(a) For a financing entity or licensed life settlement provider;

(b) In connection with a transaction in which the securities in the special purposes entity are acquired by the owner or by "qualified institutional buyers" as defined in rule 144 of the federal securities act of 1933, as amended; or

(c) In connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(15) "Stranger-originated life insurance" or "STOLI" means an act, plan, practice, or arrangement to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person, who, at the time of policy inception, could not lawfully initiate the policy himself or itself, and where, at the time of inception, there is an arrangement or agreement, whether oral or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of an insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in subsection (7) (c) of this section.

(16) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death within twenty-four (24) months or less.

41-1952. LICENSE REQUIREMENT. (1) A person shall not act as a life settlement provider or life settlement broker where the owner of the life insurance policy is a resident of this state without first obtaining a license from the director as a life insurance producer under chapter 10, title 41, Idaho Code, and complying with the additional requirements set forth in sections 41-1950 through 41-1965, Idaho Code.

(2) Not later than ten (10) days from the first day of operating as a life settlement broker or provider, and thereafter upon renewal of the life insurance producer license, the life insurance producer shall notify the director that he or she is acting as a life settlement broker or provider on a form prescribed by the director, and shall pay any applicable fee to be determined by the director specified by rule pursuant to section 41-401, Idaho Code. Notification shall include an acknowledgment by the life insurance

producer that he or she will operate as a life settlement broker in accordance with sections 41-1950 through 41-1965, Idaho Code.

(3) The insurer that issued the policy being settled shall not be responsible for any act or omission of a life settlement broker or life settlement provider arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the life settlement provider or life settlement broker in connection with the life settlement contract.

41-1953. FILING OF LIFE SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS. A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with the director accompanied by a certification that the form is in compliance with sections 41-1950 through 41-1965, Idaho Code. The director may disapprove a life settlement contract form or disclosure statement form if, in the director's opinion, the contract or provisions contained therein fail to meet the requirements of sections 41-1950 through 41-1965, Idaho Code, or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the director's discretion, the director may require the submission of advertising material.

41-1954. REPORTING REQUIREMENTS AND PRIVACY. (1) Each life settlement provider shall file with the director, on or before March 1 of each year, an annual statement containing such information on a form prescribed by the director or as prescribed by rule. Such information shall be limited to only those transactions where the owner is a resident of this state.

(2) Except as otherwise allowed or required by law, a life settlement provider, life settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure is:

- (a) Necessary to effect a life settlement between the owner and a life settlement provider and the owner and insured have provided prior written consent to the disclosure;
- (b) Provided in response to an investigation or examination by the director or any other governmental officer or agency;
- (c) A term of or condition to the transfer of a policy by one (1) life settlement provider to another life settlement provider;
- (d) Necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a life settlement provider and the owner and insured have provided prior written consent to the disclosure;
- (e) Necessary to allow the life settlement provider or life settlement broker or their authorized representatives to make contacts for the purpose of determining health status;
- (f) Required to purchase stop loss coverage or financial guaranty insurance; or
- (g) Permitted by any other provision of applicable law.

41-1955. EXAMINATION AND RECORDS. (1) A person required to be licensed by sections 41-1950 through 41-1965, Idaho Code, is subject to examination as authorized in chapter 2, title 41, Idaho Code, and shall for five (5) years retain copies of all:

- (a) Proposed, offered and executed contracts, purchase agreements, underwriting documents, policy forms, executed disclosure statements and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;

(b) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(c) All other records and documents related to the requirements of sections 41-1950 through 41-1965, Idaho Code.

(2) The provisions of this section does not relieve a person of the obligation to produce these documents to the director after the retention period has expired if the person has retained the documents.

(3) Records required to be retained by this section must be legible and complete and in accordance with section 28-50-107, Idaho Code, and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

41-1956. DISCLOSURE TO OWNER UPON APPLICATION. With each application for a life settlement contract, a life settlement provider or life settlement broker shall provide the owner with at least the following disclosures no later than the time the application for the life settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the owner and the life settlement provider or life settlement broker, and shall provide the following information:

(1) There are possible alternatives to life settlement contracts including any accelerated death benefits or policy loans offered under the owner's life insurance policy.

(2) That a life settlement broker represents exclusively the owner, and not the insurer or the life settlement provider, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner.

(3) Some or all of the proceeds of the life settlement may be taxable under federal and state law, and assistance should be sought from a professional tax advisor.

(4) Proceeds of the life settlement could be subject to the claims of creditors.

(5) Receipt of the proceeds of a life settlement may adversely affect the owner's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(6) The owner has the right to rescind a life settlement contract within twenty (20) days of the date it is executed by all parties. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans and loan interest paid on account of the life settlement contract within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all life settlement proceeds and any premiums, loans and loan interest.

(7) Funds will be sent to the owner within three (3) business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(8) Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial adviser.

(9) Disclosure to an owner shall include distribution of a brochure describing the process of life settlements. The national association of insurance commissioners (NAIC) form for the brochure shall be used unless another form is developed or approved by the director.

(10) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years."

(11) Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in sections 41-1950 through 41-1965, Idaho Code. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

41-1957. DISCLOSURE TO OWNER BY PROVIDER UPON SETTLEMENT CONTRACT. A life settlement provider shall provide the owner with at least the following disclosures prior to the time the owner signs the life settlement contract. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and shall provide the following information:

(1) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled;

(2) The name, business address and telephone number of the life settlement provider;

(3) If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed life settlement;

(4) The dollar amount of the current death benefit payable under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract; and

(5) The name, business address and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

41-1958. DISCLOSURE TO OWNER BY BROKER UPON SETTLEMENT CONTRACT. A life settlement broker shall provide the owner with at least the following disclosures prior to the time the owner signs the life settlement contract. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

(1) The name, business address and telephone number of the life settlement broker;

(2) A full, complete and accurate description of all offers, counteroffers, acceptances and rejections relating to the proposed life settlement contract;

(3) A written disclosure of any affiliations or contractual arrangements between the life settlement broker and any person making an offer in connection with the proposed life settlement contracts;

(4) The amount and method of calculating the broker's compensation, which term "compensation" includes anything of value to be paid or given to a life settlement broker for the placement of a policy; and

(5) Where any portion of the life settlement broker's compensation is taken from a proposed life settlement offer, the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement broker's compensation.

41-1959. NOTICE OF CHANGE BY PROVIDER. If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty (20) days after the change.

41-1960. GENERAL RULES. (1) A life settlement provider entering into a life settlement contract shall first obtain:

(a) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(b) A document in which the insured consents to the release of his or her medical records to a licensed life settlement provider, life settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(2) Within twenty (20) days after an owner executes documents necessary to transfer any rights under an insurance policy or within twenty (20) days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to settle the policy, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a settled policy. The notice shall be accompanied by the documents required by subsection (3) of this section.

(3) The life settlement provider shall deliver:

(a) A copy of the medical release required under subsection (1) (b) of this section;

(b) A copy of the owner's application for the life settlement contract;

(c) The notice required under subsection (2) of this section; and

(d) A request for verification of coverage to the insurer that issued the life policy that is the subject of the life transaction. The NAIC's form for verification of coverage shall be used unless another form is developed and approved by the director.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the director. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the owner. Failure by the insurer to meet its obligations under this subsection shall be a violation of section 41-1964, Idaho Code.

(5) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the owner consents to the life settlement contract, represents that

the owner has a full and complete understanding of the life settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the life settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a life settlement broker performs these activities required of the life settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(7) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state and federal law relating to confidentiality of medical information.

(8) All life settlement contracts entered into in this state, or covering a resident of this state as owner, shall provide the owner with an absolute right to rescind the contract within twenty (20) calendar days of the date upon which the life settlement contract is executed by all parties. Rescission by the owner is conditioned upon the owner both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or other person of all life settlement proceeds, and any premiums, loans and loan interest that have been paid by the life settlement provider or other person. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five (5) business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the owner's notice of rescission if rescinded at the election of the owner, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(9) The life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to an independent escrow agent. Within three (3) business days after the date the escrow agent receives the documents, or from the date the life settlement provider receives the documents, if the owner erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the federal deposit insurance corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the owner.

(10) Failure to tender consideration to the owner for the life settlement contract within the time set forth in the disclosure pursuant to section 41-1956(7), Idaho Code, renders the life settlement contract voidable by the owner for lack of consideration until the time consideration is tendered to and accepted by the owner.

(11) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement

broker after the life settlement has occurred shall only be made by the life settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three (3) months for insureds with a life expectancy of more than one (1) year, and to no more than once per month for insureds with a life expectancy of one (1) year or less. The provider or broker shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement brokers shall be responsible for the actions of their authorized representatives.

41-1961. PERMITTED LIFE SETTLEMENTS AND SUPPORTING DOCUMENTATION. (1) It is a violation of the provisions of sections 41-1950 through 41-1965, Idaho Code, for any person to enter into a life settlement contract at any time prior to the issuance of a policy which is the subject of a life settlement contract or within a two (2) year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the life settlement provider that one (1) or more of the following conditions have been met within the two (2) year period:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(b) As part of the certification, the owner submits independent evidence to the life settlement provider that one (1) or more of the following conditions have been met within the two (2) year period:

(i) The owner or insured is terminally or chronically ill;

(ii) The owner's spouse dies;

(iii) The owner divorces his or her spouse;

(iv) The owner retires from full-time employment;

(v) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(vi) A final order, judgment or decree is entered by a court of competent jurisdiction on the application of a creditor or the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all or a substantial part of the owner's assets.

(2) Copies of the independent evidence described in subsection (1) (b) of this section and documents required in section 41-1960(1) through (5), Idaho Code, shall be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with an owner submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

(3) If the life settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by subsection (1) (b) of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the life settlement provider, the copy shall be deemed to conclusively establish that the life settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

(4) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, life settlement provider or life settlement broker sign any forms, disclosures, consent or waiver form that has not been filed with the director for use in connection with life settlement contracts in this state.

(5) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty (30) days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

41-1962. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST. (1) It is a violation of the provisions of sections 41-1950 through 41-1965, Idaho Code, for any person to engage in any act that constitutes or promotes a STOLI regarding any resident of this state.

(2) With respect to any life settlement contract or insurance policy, no life settlement broker knowingly shall solicit an offer from, effectuate a life settlement with or make a sale to any life settlement provider, life settlement purchaser, financing entity or related provider trust that is an affiliate of such life settlement broker unless such relationship is first disclosed to the owner.

(3) With respect to any life settlement contract or insurance policy, no life settlement provider knowingly shall enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a life settlement broker that is an affiliate of such life settlement provider or any investor, financing entity or related provider trust that is involved in such life settlement contract unless such relationship is first disclosed to the owner.

(4) No person shall enter into a premium finance agreement with any other person or affiliate thereof pursuant to which such person shall receive any proceeds, fees or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any life settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided further that any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to his or her estate if he or she is not living at the time of the determination of overpayment.

(5) In the solicitation, application or issuance of a life insurance policy, no person shall employ any device, scheme or artifice that would result in a violation of section 41-1804, Idaho Code.

(6) No life settlement provider shall enter into a life settlement contract unless the life settlement promotional, advertising and marketing materials, as may be prescribed by rule, have been filed with the director. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of the provisions of sections 41-1950 through 41-1965, Idaho Code.

(7) No life insurance producer, insurance company, life settlement broker or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free

or without cost to the policyholder for any period of time unless provided in the policy.

41-1963. ADVERTISING FOR LIFE SETTLEMENTS. No person required to be licensed pursuant to sections 41-1950 through 41-1965, Idaho Code, shall engage in any false or misleading advertising, solicitation, or practice. In no case shall a life settlement broker or provider directly or indirectly market, advertise, solicit or otherwise promote the purchase of a new policy with the primary emphasis on settling the policy or use the words "free," "no cost" or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy.

41-1964. PENALTY - UNFAIR TRADE PRACTICES. A violation of the provisions of sections 41-1950 through 41-1965, Idaho Code, shall be considered an unfair trade practice under chapter 13, title 41, Idaho Code, subject to the penalties contained in that chapter.

41-1965. AUTHORITY TO PROMULGATE RULES. The director shall have the authority to promulgate rules implementing the provisions of sections 41-1950 through 41-1964, Idaho Code.

SECTION 2. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Approved April 1, 2009.

CHAPTER 70

(H.B. No. 76, As Amended in the Senate)

AN ACT

RELATING TO EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1316A, IDAHO CODE, TO PROVIDE THAT CERTAIN EMPLOYMENT RELATING TO THE SELLING OR SOLICITING THE SALE OF CONSUMER PRODUCTS SHALL BE CONSIDERED EXEMPT EMPLOYMENT, TO SPECIFY CONDITIONS AND TO PROVIDE FOR APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1316A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316A. EXEMPT EMPLOYMENT. "Exempt employment" means service performed:

- (1) By an individual in the employ of his spouse or child.
- (2) By a person under the age of twenty-one (21) years in the employ of his father or mother.
- (3) By an individual under the age of twenty-two (22) years who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience. This subsection shall not apply to service performed in a program established at the request of an employer or group of employers.
- (4) In the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter.
- (5) In the employ of a governmental entity in the exercise of duties:
 - (a) As an elected official;

- (b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;
 - (c) As a member of the state national guard or air national guard;
 - (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
 - (e) In a position which, pursuant to the laws of this state, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position which ordinarily does not require more than eight (8) hours per week.
- (6) By an inmate of a correctional, custodial or penal institution, if such services are performed for or within such institution.
- (7) In the employ of:
- (a) A church or convention or association of churches; or
 - (b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or
 - (c) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or
 - (d) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.
- (8) By a program participant in a facility that provides rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or provides remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the labor market.
- (9) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.
- (10) Service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress other than the social security act.
- (11) As a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school approved pursuant to state law.
- (12) By an individual under the age of eighteen (18) years of age in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.
- (13) By an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
- (14) By an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
- (15) Service covered by an election approved by the agency charged with the administration of any other state or federal unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code.
- (16) In the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.
- (17) In the employ of a hospital by a resident patient of such hospital.
- (18) By a member of an AmeriCorps program.
- (19) By an individual who is paid less than fifty dollars (\$50.00) per calendar quarter for performing work that is not in the course of the employer's trade or business, and who is not regularly employed by such em-

ployer to perform such service. For the purposes of this subsection, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(a) On each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(b) Such individual was so employed by such employer in the performance of such service during the preceding calendar quarter.

(20) By an individual who is engaged in the trade or business of selling or soliciting the sale of consumer products in a private home or a location other than in a permanent retail establishment, provided the following criteria are met:

(a) Substantially all the remuneration, whether or not received in cash, for the performance of the services is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(b) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual shall not be treated as an employee for federal and state tax purposes.

Such exemption applies solely to the individual's engagement in the trade or business of selling or soliciting the sale of consumer products in a private home or location other than in a permanent retail establishment.

Approved April 1, 2009.

CHAPTER 71
(H.B. No. 87)

AN ACT

RELATING TO VULNERABLE ADULTS; AMENDING SECTION 18-1505, IDAHO CODE, TO REVISE A DEFINITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-1505, Idaho Code, be, and the same is hereby amended to read as follows:

18-1505. ABUSE, EXPLOITATION OR NEGLECT OF A VULNERABLE ADULT. (1) Any person who abuses or neglects a vulnerable adult under circumstances likely to produce great bodily harm or death is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar (\$25,000) fine.

(2) Any person who abuses or neglects a vulnerable adult under circumstances other than those likely to produce great bodily harm or death is guilty of a misdemeanor.

(3) Any person who exploits a vulnerable adult is guilty of a misdemeanor, unless the monetary damage from such exploitation exceeds one thousand dollars (\$1,000), in which case the person is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar (\$25,000) fine.

(4) As used in this section:

(a) "Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury. Intentional abuse shall be punished under subsection (1) or (2) of this section depending upon the harm inflicted. Abuse by negligent infliction shall only be punished under subsection (2) of this section.

(b) "Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.

(c) "Exploitation" or "exploit" means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

(d) "Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health and safety of the vulnerable adult.

(e) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.

(5) Nothing in this section shall be construed to mean a person is abused, neglected or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

(6) Nothing in this section shall be construed to mean that an employer or supervisor of a person who abuses, exploits or neglects a vulnerable adult may be prosecuted unless there is direct evidence of a violation of this statute by the employer or supervisor.

Approved April 1, 2009.

CHAPTER 72
(H.B. No. 88)

AN ACT

RELATING TO MORTICIANS; AMENDING SECTION 54-1112, IDAHO CODE, TO REVISE REQUIREMENTS RELATED TO RESIDENT TRAINEE LICENSURE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1112, Idaho Code, be, and the same is hereby amended to read as follows:

54-1112. REQUIREMENTS FOR RESIDENT TRAINEE LICENSE. The board shall issue to any person a resident trainee license to practice as a resident trainee and perform services at a particular establishment under the personal supervision of a specified licensed mortician within the state of Idaho who has complied with and fulfilled all of the following requirements:

(1) Has attained the age of eighteen (18) years, and is a resident of the state of Idaho.

(2) Is of good moral character.

(3) Has graduated from an accredited high school or has received an equivalent education as determined by the standards set and established by the state board of education.

(4) Has filed an application with the board as required by this chapter and paid the required filing fee. Provided further, that the board shall make the determination of qualifications of all applicants within a reasonable time after the filing of an application with the board. Provided further, no person shall be eligible to be licensed as a resident trainee who has

practiced as a resident trainee or apprentice for a total cumulative period of more than two (2) years in the state of Idaho unless approved by the board for good cause.

Approved April 1, 2009.

CHAPTER 73
(H.B. No. 89)

AN ACT

RELATING TO BARBERS; AMENDING SECTION 54-504, IDAHO CODE, TO PROVIDE AN ADDITIONAL EXCEPTION TO LICENSURE REQUIREMENTS AND TO REVISE CERTAIN OTHER EXCEPTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-504, Idaho Code, be, and the same is hereby amended to read as follows:

54-504. EXCEPTIONS. (1) The provisions of this chapter shall not apply in the following instances:

(a) Persons authorized by the laws of the state to practice as a nurse or any of the healing arts while in the proper discharge of their professional duties;

(b) Persons who are licensed to practice cosmetology in this state, provided however, the provisions of this section shall not be construed to authorize such persons to practice barbering except those acts that are permitted under the Idaho cosmetology law; ~~and~~

(c) Persons practicing in their own home on members of their immediate family without compensation; and

(d) Persons and the facility that render barber or barber-stylist services upon persons who are incarcerated in the state of Idaho based upon a criminal offense.

(2) The provisions of section 54-513, Idaho Code, shall not apply to licensed parties performing barber or barber-styling services for persons unable by reason of ill health, or medical confinement ~~or involuntary incarceration~~ to go to a barber establishment.

Approved April 1, 2009.

CHAPTER 74
(H.B. No. 90)

AN ACT

RELATING TO LIQUEFIED PETROLEUM GAS PUBLIC SAFETY; AMENDING SECTION 54-5308, IDAHO CODE, TO PROVIDE A FEE CAP FOR EACH APPLICATION, ORIGINAL LICENSE AND ANNUAL RENEWAL OF ANY FACILITY LICENSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-5308, Idaho Code, be, and the same is hereby amended to read as follows:

54-5308. FACILITY LICENSE -- EQUIPMENT -- INSPECTIONS -- FEES. (1) The board shall issue a facility license to any person, corporation, partnership, trust, association or other legal entity to operate at specific locations only. No facility license shall be transferable, but an applicant may make application for more than one (1) facility license so long as all of the requirements are met for each license individually. Except as herein other-

wise provided, the following shall be considered minimum requirements for a facility license:

- (a) That the applicant is lawfully entitled to do business within the United States;
- (b) That the applicant has not been refused a license for a facility, or its equivalent, or had a personal or facility license revoked in Idaho or in any other state;
- (c) That the applicant has designated the name under which the facility will operate and has designated a specific location for which the facility license is to be issued;
- (d) For a facility with a storage capacity of four thousand one (4,001) gallons or more, that the applicant has at least one (1) dealer licensed under this chapter who is a resident of the state of Idaho and who is, and will be, responsible for the operation of the facility;
- (e) That the applicant has filed an application and paid the required filing fee;
- (f) That the applicant's facility meets the requirements of the LPG code, except as designated by the board by rule;
- (g) All applications for facility licenses are in writing and contain the name of the applicant, the address and location of the facility and a description of the type of structure and equipment to be used in the operation of the facility, and such further information as may be required by the board to ensure the safe operation of the facility, and its compliance with the requirements of this chapter;
- (h) The person responsible for the operation of a facility maintains such records documenting the storage, transportation, dispensation and utilization of LPG as may be required by the laws of the state of Idaho and the rules adopted by the board;
- (i) In the event a licensed facility ceases to have a licensed dealer in its employ responsible for operation of the facility, all operation involving practices regulated under this chapter shall cease and written notification of such fact shall be submitted immediately to the board. In the event a licensed facility fails to have a licensed dealer in its employ responsible for the facility within thirty (30) days of said notice, the facility license shall be summarily suspended until a licensed dealer is so employed; and
- (j) A certificate issued by an insurance company authorized to do business in the state of Idaho as proof that the applicant has procured and has in effect a general liability policy in the sum of not less than one million dollars (\$1,000,000) single limit.

(2) The board may adopt rules setting forth minimum general standards covering the design, construction, location, installation and operation of systems, equipment, pipes and containers for storing, handling, transporting by tank truck or tank trailer, and using liquefied petroleum gases and specifying the odorization of the gases and the degree thereof.

(3) The board shall adopt inspection rules regarding LPG facilities.

(4) The bureau of occupational licenses shall collect a fee not to exceed five hundred dollars (\$500) for each application, each original license and each annual renewal of any facility license issued pursuant to this chapter and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. Fees paid under the provisions of this chapter shall not be refunded unless otherwise specified herein.

Approved April 1, 2009.

CHAPTER 75
(H.B. No. 91)

AN ACT

RELATING TO GEOLOGISTS; AMENDING SECTION 54-2804, IDAHO CODE, TO REVISE A PROVISION RELATING TO QUALIFICATIONS FOR BOARD MEMBERSHIP; AMENDING SECTION 54-2808, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE POWERS OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-2810, IDAHO CODE, RELATING TO RECORD AND REGISTER KEEPING; AMENDING SECTION 54-2818, IDAHO CODE, TO CLARIFY CERTAIN CONTRACT EXCEPTIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2819, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DISCIPLINARY GROUNDS AND PROCEEDINGS AND TO PROVIDE AN ADMINISTRATIVE FINE FOR CERTAIN VIOLATIONS; AND AMENDING SECTION 54-2821, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2804, Idaho Code, be, and the same is hereby amended to read as follows:

54-2804. QUALIFICATIONS FOR BOARD MEMBERSHIP. Members of the board shall be citizens of the United States and residents of this state, and they shall have been engaged in the practice of geology for at least ~~twelve~~ seven (~~12~~7) years and shall never have been the subject of a disciplinary action under the provisions of this chapter.

SECTION 2. That Section 54-2808, Idaho Code, be, and the same is hereby amended to read as follows:

54-2808. POWERS AND DUTIES OF BOARD ~~—SUBPOENAS~~. (1) The board shall have the power to adopt and amend rules including, but not limited to, a code of ethics and standards of conduct which may be reasonably necessary for the proper performance of its duties and the administration of this chapter and the regulation of proceedings before the board. It shall adopt and have an official seal. It shall have power to provide an office, office equipment and facilities and such books and records as may be reasonably necessary for the proper performance of its duties. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

(2) The board is authorized to enter into mutual aid agreements, interstate compacts, contracts or agreements to facilitate the practice and regulation of geology in this state.

(3) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may request the attendance of witnesses and the production of such books, records and papers as may be required at any hearing before it, and for ~~that~~ the purpose of disciplinary matters pursuant to this chapter the board may request a district court to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. Subpoenas shall be directed to the sheriff of any county in the state of Idaho where such witness resides or may be found. Subpoenas shall be served and returned in the same manner as subpoenas in a criminal case. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in district court criminal cases, which fees and mileage shall be paid from any funds in the state treasury available therefor in the same manner as other expenses of the board are paid. Disobedience of any subpoena issued by the district court or the refusal by any witness in failing to testify concerning any matter regarding which he may lawfully be interrogated, or the failure to produce any

books, records or papers, shall constitute a contempt of the district court of any county where such disobedience or refusal occurs, and said court, or any judge thereof, by proceedings for contempt in said court, may, if such contempt be found, punish said witness as in any other case of disobedience of a subpoena issued from such court or refusal to testify therein.

(4) The board is hereby authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter or to restrain any violation thereof.

SECTION 3. That Section 54-2810, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 54-2818, Idaho Code, be, and the same is hereby amended to read as follows:

54-2818. STATE AND POLITICAL SUBDIVISION CONTRACTS -- EXCEPTIONS. As to geology work performed within the state of Idaho, t~~This state and its political subdivisions, such as county, city, or legally constituted boards, districts, commissions or authorities, shall contract for geological services only with persons registered under this act~~ chapter, provided further that nothing in this section or ~~act~~ chapter shall be construed to prevent registered professional engineers from lawfully practicing soils mechanics, foundation engineering, geological engineering, and other professional engineering, as provided in chapter 12, title 54, Idaho Code, and licensed architects from lawfully practicing architecture as provided in chapter 3, title 54, Idaho Code.

SECTION 5. That Section 54-2819, Idaho Code, be, and the same is hereby amended to read as follows:

54-2819. DISCIPLINE. (1) Grounds for discipline. The board shall have the power to deny any application for or renewal of a certificate of registration or to revoke, suspend or ~~amend any such certificate~~ otherwise discipline any registrant or registration issued pursuant to this chapter and to limit or restrict the practice of any registrant upon a determination by the board that the person:

- (a) Made, or caused to be made, a false, fraudulent or forged statement, document, credentials or representation in procuring or attempting to procure a certificate of registration to practice geology; or
- (b) Practiced geology under a false or assumed name; or
- (c) Was convicted of, found guilty, received a withheld judgment or suspended sentence in this or any other state of action constituting a felony or of a crime involving moral turpitude; or
- (d) Violated the provisions of this chapter or rules, standards of conduct and practice, or any ethical codes as may be adopted by the board; or
- (e) Is or has been grossly negligent, incompetent, or reckless in the practice of geology; or
- (f) Has had a license, certificate, or registration to practice as a professional geologist suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(2) Proceedings. Every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice.

- (a) All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code, and the Idaho rules of administrative procedure of the attorney general (IDAPA 04.11.01).

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence.

(3) Probation. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor or supervise the practice of geology by the registrant subject to such order for the prescribed probationary period.

(4) Subsequent review. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice professional geology and that he is not likely to violate the provisions of this section or rules adopted hereunder in the future.

(5) Costs and fees. The board may, pursuant to an order of discipline or as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs and fees incurred by the board in proceedings upon which the order was entered.

(6) Administrative fines. The board may, pursuant to an order of discipline, require the payment of an administrative fine not to exceed one thousand dollars (\$1,000) for each violation of the provisions of this section or rules adopted hereunder.

SECTION 6. That Section 54-2821, Idaho Code, be, and the same is hereby amended to read as follows:

54-2821. VIOLATIONS OF ~~ACT~~ CHAPTER. (1) Any person who shall practice, or offer to practice, professional geology for others in this state without being registered in accordance with the provisions of this ~~act~~ chapter, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or a revoked certificate of registration or practice at any time during a period the board has suspended or revoked a certificate of registration or any person who shall violate any of the provisions of this ~~act~~ chapter, shall be guilty of a misdemeanor.

(2) The board may employ legal counsel or may request the attorney general of this state or any assistant designated by him to act as legal advisor of the board, and the attorney general shall be reimbursed by the board for any expenses incurred by the attorney general in representing the board; and all violations of the provisions of this ~~act~~ chapter shall be prosecuted by the prosecuting attorney of the county or counties in which the violations of the ~~act~~ chapter may be committed.

Approved April 1, 2009.

CHAPTER 76
(H.B. No. 92)

AN ACT
RELATING TO ARCHITECTS; AMENDING SECTION 54-302, IDAHO CODE, TO REVISE EXAMINATION AND LICENSURE REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-302, Idaho Code, be, and the same is hereby amended to read as follows:

54-302. QUALIFICATIONS FOR EXAMINATION AND LICENSE. ~~(1-)~~ A person applying for examination ~~and license~~ shall submit satisfactory evidence of the following to the board of architectural examiners:

~~(a-)~~ Graduation from an accredited architectural curriculum in a school or college approved by the board of architectural examiners as of satisfactory standing, and a specific record of having started or completed an additional three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board, by rule indicating that the applicant is competent to practice architecture; or

~~(b-)~~ That the applicant has attained standards, as the board may adopt by rule, of knowledge and skill approximating that attained through graduation from an accredited architectural curriculum, and a specific record of eight (8) years or more of experience in architectural work of a character deemed satisfactory by the board by rule, indicating that the applicant is competent to practice architecture, and a specific record of having started or completed an additional three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board.

~~(2-)~~ A person is qualified for all examination divisions once they have met the graduation requirement and started the internship program as defined in the board rules or met the eight (8) years of experience requirement as approved by the board and started the internship program as defined in the board rules.

(3) A person is qualified for a license once they have established a specific record of successful passage of all examination divisions and the completion of three (3) years or more of experience in architectural work in an internship setting of a character deemed satisfactory by the board.

(4) The board may adopt, by rule, as its own standards for education and experience, the guidelines published by the national council of architectural registration boards.

Approved April 1, 2009.

CHAPTER 77
(H.B. No. 101)

AN ACT

RELATING TO BEEF PROMOTION; AMENDING SECTION 25-2907, IDAHO CODE, TO PROVIDE FOR A REFUND OF BEEF ASSESSMENTS, TO INCREASE THE ASSESSMENT FOR BEEF PROMOTION AND TO REVISE PROCEDURES; AND REPEALING SECTION 25-2908, IDAHO CODE, RELATING TO DISBURSEMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-2907, Idaho Code, be, and the same is hereby amended to read as follows:

25-2907. ASSESSMENTS -- COLLECTION. (1) There is hereby levied and imposed upon all cattle an assessment of not more than fifty cents (50¢) per head, to be paid by the owner. Any person may submit a written request for a refund of the assessment, or any portion thereof, to the council within ninety (90) calendar days of the assessment. The council shall make the requested refunds on a calendar quarterly basis. Any refund request that is received by the council less than fifteen (15) days from the end of the calendar quarter shall be paid at the end of the next quarter.

(2) The assessment imposed by this section shall be collected+

~~(a) Each time a change in ownership of cattle occurs.~~

~~(b) When Idaho cattle leave the state permanently even though no change in ownership occurs.~~

(3) The state brand inspector shall collect state or other beef promotion assessments in addition to, at the same time and in the same manner as the fee charged for the state brand inspection. Such assessment so collected belongs to and shall be paid to the Idaho beef council, either directly or later by remittance together with a report. The council shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the council and the inspector.

(4) In the event the federal beef promotion and research act is no longer in effect:

(a) The Idaho beef council shall have the authority to increase the assessment provided for in subsection (1) of this section to not more than one dollar and fifty cents (\$1.~~0~~50) per head.

(b) Any person may submit a written request for a refund of ~~a collected assessment, or any portion thereof, to the council within thirty (30) calendar days after payment of the assessment. The council shall make the refund no later than sixty (60) calendar days after receipt of the refund request, provided the council has received the assessment from the state brand inspector~~ the assessment, or any portion thereof, to the council within ninety (90) calendar days of the assessment. The council shall make the requested refunds on a calendar quarterly basis. Any refund request that is received by the council less than fifteen (15) days from the end of the calendar quarter shall be paid at the end of the next quarter.

SECTION 2. That Section 25-2908, Idaho Code, be, and the same is hereby repealed.

Approved April 1, 2009.

CHAPTER 78
(H.B. No. 103)

AN ACT

RELATING TO COUNTY FEES AND THE PROTECTION OF PERSONS UNDER DISABILITY; REPEALING SECTION 2, CHAPTER 55, LAWS OF 2005, RELATING TO A SUNSET DATE FOR THE GUARDIANSHIP PILOT PROJECT FUND; AMENDING SECTION 15-5-404, IDAHO CODE, TO PROVIDE THAT FINANCIAL PLANS FILED IN CERTAIN CONSERVATORSHIP CASES ARE SUBJECT TO EXAMINATION AND REVIEW AS PROVIDED BY RULES ADOPTED BY THE IDAHO SUPREME COURT; AMENDING SECTION 15-5-418, IDAHO CODE, TO PROVIDE THAT INVENTORY AND RECORDS FILED IN CERTAIN CONSERVATORSHIP CASES ARE SUBJECT TO EXAMINATION AND REVIEW AS PROVIDED BY RULES ADOPTED BY THE IDAHO SUPREME COURT; AND AMENDING SECTION 15-5-419, IDAHO CODE, TO PROVIDE THAT ACCOUNTS AND REPORTS FILED IN CERTAIN CONSERVATORSHIP CASES ARE SUBJECT TO EXAMINATION AND REVIEW AS PROVIDED BY RULES ADOPTED BY THE IDAHO SUPREME COURT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 2, Chapter 55, Laws of 2005, be, and the same is hereby repealed.

SECTION 2. That Section 15-5-404, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER. (a) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any per-

son who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

(c) The petition shall include a financial plan for the proposed actions of the conservator regarding the financial affairs of the protected person after appointment of the conservator, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete assets, income, expenses, debts and other financial concerns of the protected person are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed conservator, then the conservator shall submit to the court, and to all interested persons, in writing, within the ninety (90) day inventory, as a part thereof, a financial plan covering all of the assets, income, expenses, debts and other financial concerns of the protected person. Such financial plan must also be given to any person who has filed a request for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct. Such financial plan shall be given to all such persons in accordance with the methods set forth in section 15-1-401, Idaho Code. If the financial plan changes during any time period between the periodic reports of the conservator, the modified financial plan shall be filed with the next report as a part thereof. The financial plan and any modified financial plan filed pursuant to this subsection (c) shall be subject to examination and review by the court, or persons designated by the court to make such examination and review, as provided by rules adopted by the Idaho supreme court.

SECTION 3. That Section 15-5-418, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-418. INVENTORY AND RECORDS. Within ninety (90) days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen (14) years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The inventory filed pursuant to this section shall be subject to examination and review by the court, or persons designated by the court to make such examination and review, as provided by rules adopted by the Idaho supreme court. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

SECTION 4. That Section 15-5-419, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-419. ACCOUNTS AND REPORTS. (a) Every conservator or guardian shall submit a written annual report to the court concerning the status of the ward and of the ward's estate that has been under the guardian's or conservator's control. The guardian or conservator shall also be required

to provide copies of the report to all persons listed by the court as having an interest in receiving copies of the report. The court may order more frequent reports by its own ruling or pursuant to a petition of any person interested in the ward's welfare. Every conservator must account annually, or as otherwise directed by the court, and upon his resignation or removal. On termination of the protected person's minority or disability, a conservator shall account to the court and shall account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(b) Except as otherwise provided in subsection (c) of this section, every report submitted by a conservator shall cover a specific time period, which period shall be stated explicitly in the report. The report shall cover all of the estate of the protected person which is under the control of the conservator. Supporting documentation for items in the report shall either accompany such report or, if such supporting documentation is voluminous, or expensive to provide, or contains sensitive or private information, or another good reason exists for not providing such supporting documentation with the report, the report shall state the reason that the supporting documentation is not provided and that the supporting documentation is held by, or is reasonably available to, the conservator and will be produced upon request. The report shall contain, to the extent reasonably available to the conservator, at least the following:

(1) A reasonably detailed listing of the starting inventory of the estate of the protected person at the beginning of the time period for which the report is made. Every such inventory item shall be specifically identified; provided however, that items may be reported in categories, such as miscellaneous personal property, rather than individually, and valued by category, when reasonable. The fair market value of each such item or category shall be stated in such starting inventory and the method of determining such fair market value shall also be stated. In the case of an item or category which is secured by an encumbrance or debt of any nature, the encumbrance or debt shall be listed separately from the item or category and shall be specifically identified, including the items or category secured by the encumbrance or debt, the amount of the encumbrance or debt as of the date of the starting inventory, the holder of such debt or encumbrance, the family relationship of such holder to the protected person if actually known to the conservator, and any other reasonably relevant information;

(2) A reasonably detailed listing, for the covered time period, of the receipts, of any nature, by the estate of the protected person; provided however, that the receipts may be reported in categories, such as interest income, social security payments or rental receipts, if reasonable. Such listing shall reasonably identify each such receipt or category, including the source of such receipt or category and the exact amount or fair market value thereof, and the method of determining such amount or fair market value;

(3) A reasonably detailed listing, for the covered time period, of all payments or expenses, of any nature, by the estate of the protected person; provided however, that the payments or expenses may be reported in categories, such as rental or house payments, medical expenses or transportation expenses, if reasonable. Each such payment or category shall be set forth in reasonable detail, including the amount thereof,

to whom the payment was made, the method or frequency of making such payment if not reasonably indicated by the item or category, the consideration for such payment if not reasonably indicated by the item or category, the family relationship of the receiver of such payment to the protected person if actually known to the conservator, the time period covered by such payment if relevant, and any other information reasonably relevant to such payment;

(4) A reasonably detailed listing of the ending inventory of the estate of the protected person at the end of the time period for which the report is made, in the same manner as described above for the starting inventory;

(5) If the report does not, on its face, balance exactly the starting and ending inventories with the receipts and payments of the estate of the protected person, a reasonably detailed analysis and statement of the reasons for such imbalance, and a reasonably detailed listing of the correcting entries necessary to balance such report, such as unrealized gains or losses on assets of the estate, shall be made as part of the report; and

(6) Any other information, of any nature, which is reasonably relevant to the actions of the conservator during the time period covered by the report, which shall be submitted as part of the report or shall accompany such report.

(c) Any report prepared by a federally or state chartered financial institution using a fiduciary accounting system that produces statements containing asset positions, receipts, and disbursements shall be deemed to satisfy the reporting requirements set forth in subsection (b) of this section. The court may order any such report filed by a federally or state chartered financial institution to be supplemented or may order that any information reasonably relevant to the report be produced.

(d) All accounts and reports required by or ordered pursuant to this section, shall be subject to examination and review by the court, or persons designated by the court to make such examination and review, as provided by rules adopted by the Idaho supreme court.

(e) If a conservator or guardian:

(1) Makes a substantial misstatement on filings of any required annual reports; or

(2) Is guilty of gross impropriety in handling the property of the ward; or

(3) Willfully fails to file the report required by this section, after receiving written notice of the failure to file and after a grace period of two (2) months have elapsed;

then the court may impose a fine in an amount not to exceed five thousand dollars (\$5,000) on the conservator or guardian. The court may appoint a guardian ad litem for the ward on its own motion or on the motion of any interested party to represent the ward in any proceedings hereunder and may also appoint appropriate persons or entities to make investigation of the actions of the conservator or guardian. The court may also order restitution of funds misappropriated from the estate of a ward and may impose a surcharge upon the conservator or guardian responsible for such misappropriation for all damages, costs and other appropriate sums determined by the court, in addition to any fine imposed including, but not limited to, any fees and costs of the guardian ad litem. The court may take any other actions which are in the best interests of the ward and the protection of the assets of the ward. Any sums awarded hereunder shall be paid by the conservator or guardian and may not be paid by the estate of the ward. The court may enter judgment against a conservator or guardian for any or all of the foregoing, and may impose judgment against any bond of such conservator or guardian.

CHAPTER 79
(H.B. No. 104)

AN ACT

RELATING TO COORDINATED FAMILY SERVICES; AMENDING SECTION 32-1402, IDAHO CODE, TO PROVIDE THAT A DOMESTIC VIOLENCE COURT COORDINATOR IS AN EFFECTIVE RESPONSE TO ADDRESS THE NEEDS OF FAMILIES AND CHILDREN; AMENDING SECTION 32-1407, IDAHO CODE, TO PROVIDE THAT A DOMESTIC VIOLENCE COURT COORDINATOR SHALL SUBMIT TO A FINGERPRINT-BASED CRIMINAL HISTORY CHECK; AMENDING CHAPTER 14, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-1408, IDAHO CODE, TO PROVIDE A STATEMENT OF POLICY RELATING TO DOMESTIC VIOLENCE COURTS; AMENDING CHAPTER 14, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-1409, IDAHO CODE, TO PROVIDE FOR DOMESTIC VIOLENCE COURTS; AND AMENDING CHAPTER 14, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-1410, IDAHO CODE, TO PROVIDE FOR DOMESTIC VIOLENCE COURT FEES AND THE DISTRIBUTION OF DOMESTIC VIOLENCE COURT FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 32-1402, Idaho Code, be, and the same is hereby amended to read as follows:

32-1402. DECLARATION OF PURPOSE. The legislature declares that an effective response to address the needs of families and children in resolving these disputes would include the following:

(1) Case management practices that provide a flexible response to the diverse court-related needs of families involved in multiple court cases which will promote the efficient use of time and resources of the parties and the court, and avoid conflicting court orders;

(2) The expansion of available nonadversarial methods of dispute resolution, including mediation of child custody and visitation disputes and alternative dispute resolution assessments;

(3) Coordination of family dispute issues with related litigation involving the juvenile correction laws and criminal laws;

(4) A family court services coordinator to assist families in need to connect with appropriate resources for the family, to provide assessment information to the court to assist in early case resolution, and to conduct workshops which will educate the parties on the adverse impact of high conflict family disputes upon children, identify the developmental needs of children, and emphasize the importance of parenting plans and mediation techniques which peacefully resolve child custody and visitation issues;

(5) A court assistance officer to provide assistance to parties without legal representation to help them understand the legal requirements of the court system, including educational materials, court forms, assistance in completing court forms, information about court procedures, and referrals to public and community agencies and resources that provide legal and other services to parents and children;

(6) A domestic violence court coordinator to assist in the effective operation of a domestic violence court and to serve victims and families involved in domestic violence court proceedings;

(7) Supervised visitation by trained providers to assure the safety and welfare of children in cases where certain risk factors are identified; and

(78) The adoption of other methods and procedures which will promote a timely and effective resolution of related disputes in court cases involving children and families.

SECTION 2. That Section 32-1407, Idaho Code, be, and the same is hereby amended to read as follows:

32-1407. ~~FAMILY~~ COURT SERVICES COORDINATORS -- RECORD CHECKS. Prior to appointment, and at his or her own cost, a family court services coordinator or a domestic violence court coordinator shall submit to a fingerprint-based criminal history check through any law enforcement office in the state providing such a service. The criminal history check shall include a statewide criminal identification bureau check, federal bureau of investigation criminal history check, child abuse registry check, adult protection registry check and statewide sex offender registry check. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho.

SECTION 3. That Chapter 14, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 32-1408, Idaho Code, and to read as follows:

32-1408. DOMESTIC VIOLENCE COURTS -- STATEMENT OF POLICY. The legislature finds that:

(1) Domestic violence is a serious crime that causes substantial damage to victims and children, as well as to the community. Families experiencing domestic violence are often involved in more than one (1) court proceeding including divorce and custody cases, as well as civil and criminal proceedings regarding domestic violence, substance abuse and child protection. Substantial state and county resources are required each year for the incarceration, supervision and treatment of batterers.

(2) Domestic violence courts hold offenders accountable, increase victim safety, provide greater judicial monitoring and coordinate information to provide effective interaction and use of resources among the courts, justice system personnel and community agencies. Effective case management and coordination ensure that decisions in one (1) case do not conflict with existing orders in other civil and criminal cases and provide courts with the necessary information to protect victims and families.

(3) Domestic violence courts have proven effective in reducing recidivism and increasing victim safety. It is in the best interests of the citizens of this state to expand domestic violence courts to each judicial district.

SECTION 4. That Chapter 14, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 32-1409, Idaho Code, and to read as follows:

32-1409. DOMESTIC VIOLENCE COURTS. (1) The district court in each county may establish a domestic violence court in accordance with the policies and procedures adopted by the supreme court based upon recommendations by the committee as authorized pursuant to section 32-1403, Idaho Code.

(2) The committee shall recommend policies and procedures for domestic violence courts addressing eligibility, identification and screening, assessment, treatment and treatment providers, case management and supervision, judicial monitoring, supervision of progress and evaluation. The committee shall also solicit specific domestic violence court plans from each judicial district, recommend funding priorities for each judicial district and provide training to ensure the effective operation of domestic violence courts.

(3) No person has a right to be admitted into a domestic violence court.

SECTION 5. That Chapter 14, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 32-1410, Idaho Code, and to read as follows:

32-1410. DOMESTIC VIOLENCE COURT FEES. (1) Each person who is found guilty of or pleads guilty to any of the following alcohol, substance abuse or domestic violence related offenses shall pay a thirty dollar (\$30.00) fee to be deposited in the statewide drug court, mental health court and family court services fund, as provided in section 1-1625, Idaho Code, to assist in funding the domestic violence courts:

- (a) Section 18-918, Idaho Code (domestic violence);
- (b) Section 18-920, Idaho Code (violation of no contact order);
- (c) Section 18-923, Idaho Code (attempted strangulation);
- (d) Section 18-1502, Idaho Code (beer, wine or other alcohol age violations);
- (e) Section 18-2511, Idaho Code (possession of a controlled substance or dangerous weapon);
- (f) Section 18-4006 3. (b), Idaho Code (vehicular manslaughter in the commission of a violation of section 18-8004 or 18-8006, Idaho Code);
- (g) Section 18-5414, Idaho Code (intentionally making false statements);
- (h) Section 18-8004, Idaho Code (persons under the influence of alcohol, drugs or any other intoxicating substances);
- (i) Section 18-8006, Idaho Code (aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances);
- (j) Section 23-312, Idaho Code (persons under twenty-one and intoxicated persons -- inhibited sales);
- (k) Section 23-505, Idaho Code (transportation of alcoholic beverages);
- (l) Section 23-602, Idaho Code (unlawful manufacture, traffic in, transportation and possession of alcohol beverage);
- (m) Section 23-603, Idaho Code (dispensing to minor);
- (n) Section 23-604, Idaho Code (minors -- purchase, consumption or possession prohibited);
- (o) Section 23-605, Idaho Code (dispensing to drunk);
- (p) Section 23-612, Idaho Code (beer, wine or other alcoholic beverages on public school grounds);
- (q) Section 23-615, Idaho Code (restrictions on sale);
- (r) Section 23-949, Idaho Code (persons not allowed to purchase, possess, serve, dispense or consume beer, wine or other alcoholic liquor);
- (s) Section 23-1013, Idaho Code (restrictions concerning age);
- (t) Section 23-1024, Idaho Code (false representation as being twenty-one or more years of age a misdemeanor);
- (u) Section 23-1333, Idaho Code (open or unsealed containers of wine in motor vehicles on highways prohibited);
- (v) Section 23-1334, Idaho Code (minors - authorization to deliver);
- (w) Criminal violation of any of the provisions of chapter 27, title 37, Idaho Code;
- (x) Section 39-6312, Idaho Code (violation of order -- penalties);
- (y) Section 67-7034, Idaho Code (persons under the influence of alcohol, drugs or any other intoxicating substances); and
- (z) Section 67-7114, Idaho Code (operation under the influence of alcohol, drugs or any other intoxicating substance).

(2) The clerk of the district court shall collect the fees set forth in subsection (1) of this section. The fees shall be paid over to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the drug court, mental health court and family court services fund.

Approved April 1, 2009.

CHAPTER 80
(H.B. No. 105)

AN ACT

RELATING TO FEES; AMENDING SECTION 1-2303, IDAHO CODE, TO INCREASE THE FILING FEE FOR SMALL CLAIMS CASES AND TO REVISE THE DISTRIBUTION OF THE FILING FEE FOR SMALL CLAIMS CASES TO PROVIDE THAT A CERTAIN AMOUNT SHALL BE DEPOSITED IN THE SENIOR MAGISTRATE JUDGES FUND; AMENDING SECTION 31-3201A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN DISTRICT COURT FEES, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 18-918, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-2303, Idaho Code, be, and the same is hereby amended to read as follows:

1-2303. FILING OF CLAIM -- DEFAULT. Upon filing a claim, the clerk shall furnish to the plaintiff a form of answer and instructions to the defendant, which, among other matters shall advise the defendant that if the defendant desires to have a hearing on the matter, the defendant must sign, complete and file the answer with the clerk. The instructions also shall notify the defendant that if the defendant does not sign and file the answer within twenty (20) days from the date of service on the defendant, judgment will be entered as requested in the claim.

If no answer is filed within twenty (20) days, judgment may be entered by the court as provided in Rule 55, I.R.C.P. If an answer is filed by the defendant, the court shall set the matter for trial or mediation, by notice mailed to each party.

The court shall collect in advance upon each claim the sum of ~~seven~~ thirteen dollars (\$~~7~~13.00), which shall be in addition to the costs necessary to effect service of the claim upon the defendant, ~~and which~~ This fee shall be distributed as follows: seven dollars (\$7.00) shall be paid to the county treasurer for deposit in the district court fund of the county and six dollars (\$6.00) shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fee to the state treasurer for deposit in the senior magistrate judges fund.

SECTION 2. That Section 31-3201A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law:

(a) Civil cases. A fee of fifty dollars (\$50.00) for filing a civil case of any type in the district court or in the magistrate's division of the district court ~~including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both~~ with the following exceptions:

~~The filing fee shall be twenty eight dollars (\$28.00) in each case where the amount of money or damages or the value of personal property claimed does not exceed three hundred dollars (\$300). The filing fee shall be thirty dollars (\$30.00) in the following types of cases:~~

(1a) ~~Where the amount of money or damages or the value of personal property claimed exceeds three hundred dollars (\$300) but does not exceed~~

~~one thousand dollars (\$1,000) The fee for small claims shall be as provided in section 1-2303, Idaho Code;~~

~~(2b) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;~~

~~(3) Where a case is brought under chapter 20, title 16, Idaho Code, for the termination of parent-child relationship;~~

~~(4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;~~

~~(5) Where a case involving the administration of a decedent's estate is brought under the summary administration of small estates act;~~

~~(6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including, but not limited to, proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;~~

~~(7) In cases brought to determine heirship without administration;~~

~~(8) In cases brought to determine inheritance or transfer tax;~~

~~(9) In proceedings brought for adoption;~~

~~(10) In proceedings brought for letters of guardianship of the person or of the estate or both.~~

No filing fee shall be charged in the following types of cases:

(i) In cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;

(ii) In cases brought under the juvenile corrections act;

(iii) In cases brought under the child protective act;

(iv) Demands for bond before a personal representative is appointed in probate;

(v) Petitions for sterilization;

(vi) Petitions for judicial consent to abortion;

(vii) Registration of trusts and renunciations;

(viii) Petitions for leave to compromise the disputed claim of a minor;

(ix) Petitions for a civil protection order or to enforce a foreign civil protection order pursuant to chapter 63, title 39, Idaho Code;

(x) Objections to the appointment of a guardian filed by a minor or an incapacitated person;

(xi) Proceedings to suspend a license for nonpayment of child support pursuant to section 7-1405, Idaho Code;

(xii) Proceedings under the uniform post-conviction procedure act as provided in chapter 49, title 19, Idaho Code;

(xiii) Filings of a custody decree from another state;

(xiv) Filings of any answer after an initial appearance fee has been paid.

~~In all cases in which a The filing fee of fifty dollars (\$50.00) is paid, shall be distributed as follows: seventeen dollars (\$17.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; seventeen dollars (\$17.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p15) of this section; and six dollars (\$6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. In all cases in which a filing fee of thirty dollars (\$30.00) is paid, four dollars (\$4.00) of such filing fee shall be paid to the county treasurer for deposit in the~~

~~district court fund of the county; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. In all cases in which a filing fee of twenty eight dollars (\$28.00) is paid, three dollars (\$3.00) of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; nine dollars (\$9.00) of such filing fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p) of this section; and six dollars (\$6.00) of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.~~

(b2) Felonies and misdemeanors. A fee of seventeen dollars and fifty cents (\$17.50) shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, except when the court orders such fee waived because the person is indigent and unable to pay such fee. If the magistrate court facilities are provided by the county, five dollars (\$5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and twelve dollars and fifty cents (\$12.50) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p15) of this section. If the magistrate court facilities are provided by a city, five dollars (\$5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents (\$2.50) of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and ten dollars (\$10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p15) of this section.

(e3) Infractions. A fee of sixteen dollars and fifty cents (\$16.50) shall be paid, but not in advance, by each person found to have committed an infraction or any minor traffic, conservation or ordinance violation; provided that the judge or magistrate may in his or her discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, five dollars (\$5.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and eleven dollars and fifty cents (\$11.50) of such fee shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in accordance with subsection (p15) of this section. If the magistrate court facilities are provided by a city, five dollars (\$5.00) of such fee shall be paid to the city treasurer for deposit in the city general fund, two dollars and fifty cents (\$2.50) of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrate court facilities, and nine dollars (\$9.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (p15) of this section.

(d4) Initial appearance other than plaintiff. A fee of thirty dollars (\$30.00) shall be paid for any filing constituting the initial appearance by any party, except the plaintiff, ~~making an appearance~~ in any civil action in the district court or in the magistrate's division of the district court.

except small claims. If two (2) or more parties are making their initial appearance in the same filing, then only one (1) filing fee shall be collected. Of such fee, four dollars (\$4.00) shall be paid to the county treasurer for deposit in the district court fund of the county; ten dollars (\$10.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARs technology fund; ten dollars (\$10.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (~~p~~15) of this section; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(e5) Accountings. A fee of nine dollars (\$9.00) shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~f~~6) Distribution of estate. A fee of twenty-five dollars (\$25.00) shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, six dollars (\$6.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; thirteen dollars (\$13.00) of such fee shall be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (~~p~~15) of this section; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(~~g~~7) ~~A fee of thirteen dollars (\$13.00) shall be paid by an intervenor upon making an appearance in any civil action in the district court or in the magistrate's division of the district court. Seven dollars (\$7.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county, and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.~~

(~~h~~) Third party claim. A fee of fourteen dollars (\$14.00) shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. Eight dollars (\$8.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(~~i~~8) Cross-claims. A fee of fourteen dollars (\$14.00) shall be paid by any party filing a cross-claim. Eight dollars (\$8.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(~~j~~9) Change of venue. A fee of nine dollars (\$9.00) shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~k~~10) Reopening a case. A fee of fifteen dollars (\$15.00) shall be paid by any party appearing after judgment or applying to reopen a case. Nine dollars (\$9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. A fee of thirty-eight dollars (\$38.00)

shall be paid by a party applying to reopen a divorce action or modify a divorce decree, with seventeen dollars (\$17.00) of the fee to be paid to the county treasurer for deposit in the district court fund of the county; fifteen dollars (\$15.00) of such fee to be paid to the county treasurer who shall pay such fees to the state treasurer for deposit in accordance with subsection (~~p~~15) of this section; and six dollars (\$6.00) of such fee to be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(~~11~~) Appeal to district court. A fee of fifteen dollars (\$15.00) shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(~~12~~) Appeal to supreme court. A fee of fifteen dollars (\$15.00) shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. Nine dollars (\$9.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and six dollars (\$6.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the senior magistrate judges fund.

(~~13~~) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(~~14~~) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(~~p~~15) That portion of the filing fees required to be remitted to the state treasurer for deposit pursuant to subsections (~~a~~1), (~~b~~2), (~~c~~3), (~~d~~4), and (~~f~~6) and (10) of this section shall be apportioned eighty-six percent (86%) to the state general fund and fourteen percent (14%) to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(~~16~~) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer, the county treasurer shall retain five dollars (\$5.00), which shall be separately identified and deposited in the district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code, and the administration of section 18-918(7), Idaho Code, relating to the evaluation and counseling or other treatment of such persons, including the payment of the costs of evaluating and counseling or other treatment

of an indigent defendant. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(~~#~~17) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

SECTION 3. That Section 18-918, Idaho Code, be, and the same is hereby amended to read as follows:

18-918. DOMESTIC VIOLENCE. (1) For the purpose of this section:

(a) "Household member" means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.

(b) "Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

(2) (a) Any household member who in committing a battery, as defined in section 18-903, Idaho Code, inflicts a traumatic injury upon any other household member is guilty of a felony.

(b) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000) or by both fine and imprisonment.

(3) (a) A household member who commits an assault, as defined in section 18-901, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic assault.

(b) A household member who commits a battery, as defined in section 18-903, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic battery.

(c) A first conviction under this subsection (3) is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of a violation of this subsection (3), or of any substantially conforming foreign criminal violation, notwithstanding the form of the judgment or withheld judgment, within ten (10) years of the first conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars (\$2,000) or by both fine and imprisonment. Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of two (2) violations of this subsection (3), or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within fifteen (15) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000) or by both fine and imprisonment.

(4) The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(5) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a felony violation of the provisions of this section or of any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who within fifteen (15) years pleads guilty to or is found guilty of any further violation of this section, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(6) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(7) (a) Any person who pleads guilty to or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, agency or organization approved by the court in accordance with paragraph (c) of this subsection to determine whether the defendant should be required to obtain aggression counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court's list of approved evaluators, in accordance with paragraph (c) of this subsection, contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the rea-

sons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

(c) Each judicial district shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A(e~~16~~), Idaho Code.

(d) Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence.

Approved April 1, 2009.

CHAPTER 81
(H.B. No. 107)

AN ACT

RELATING TO EXECUTION; AMENDING SECTION 19-2716, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE INFLICTION OF THE DEATH PENALTY AND TO CORRECT A CODIFIER'S ERROR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2716, Idaho Code, be, and the same is hereby amended to read as follows:

19-2716. INFLICTION OF DEATH PENALTY. The punishment of death shall be inflicted by continuous, intravenous administration of a lethal quantity of ~~an ultra short acting barbituate in combination with a chemical paralytic agent~~ a substance or substances approved by the director of the Idaho department of correction until death is pronounced by ~~a physician licensed under the provisions of chapter 18, title 54, Idaho Code, in accordance with accepted medical standards~~ a coroner or a deputy coroner. The director of the Idaho department of corrections shall determine ~~the substance or substances to be used and the procedures to be used in any execution, provided, however, that, in any case where the director finds it to be impractical to carry out the punishment of death by administration of the required lethal substance or substances for the reason that it is not reasonably possible to obtain expert technical assistance, should such be necessary to assure that infliction of death by administration of such substance or substances can be carried out in a manner which causes death without unnecessary suffering,~~ the sentence of death may be carried out by firing squad, the number of members of which shall be determined by the director; and provided further, that ~~any infliction of the punishment of death by administration of the required lethal substance or substances in the manner required by this section shall not be construed to be the practice of medicine and any pharmacist or pharmaceutical supplier is authorized to dispense drugs to the director or his designee, without prescription, for carrying out the provisions of this sec-~~

~~tion, notwithstanding any other provision of law.~~ This act shall apply to all executions carried out on and after the effective date of this enactment, irrespective of the date sentence was imposed.

Approved April 1, 2009.

CHAPTER 82
(H.B. No. 125)

AN ACT

RELATING TO VETERINARIANS; AMENDING SECTION 54-2103, IDAHO CODE, TO REVISE A DEFINITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2103, Idaho Code, be, and the same is hereby amended to read as follows:

54-2103. DEFINITIONS. As used in this chapter:

(1) "Accredited continuing education activity" means a provider and course, seminar, scientific program or any other activity approved by the board or its designees for continuing education credit.

(2) "Accredited or approved school of veterinary medicine" means any veterinary college or division of a university or college inside or outside the United States or Canada that offers the degree of doctor of veterinary medicine, veterinary medicine doctor, or its equivalent and is accredited or approved by the council on education of the American veterinary medical association or other accrediting agency or association approved by the board.

(3) "Allied health professional" means a person holding a current active license, in good standing, in any state to practice one (1) of the healing arts including, but not limited to medicine, dentistry, osteopathy, chiropractic, acupuncture and podiatry.

(4) "Anesthetized" means any condition of general anesthesia, caused by the administration of a drug or combination of drugs in sufficient quantity to produce a state of unconsciousness or disassociation and blocked response to a given pain or alarm stimulus.

(5) "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(6) "Assistant" means any individual who is employed by an actively licensed veterinarian to perform acts pertaining to the practice of veterinary medicine and receives compensation for such acts from the employing veterinarian but is not a certified veterinary technician or licensed veterinarian.

(7) "Board" means the state board of veterinary medicine.

(8) "Certified euthanasia agency" or "CEA" means a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals, which has been inspected and certified by the euthanasia task force or the board.

(9) "Certified euthanasia technician" or "CET" means:

(a) A person employed by a certified euthanasia agency, ~~or a law enforcement employee working under the indirect supervision of a licensed veterinarian,~~ but not to include an individual employed as a technician by animal research laboratories, who is instructed and certified by the euthanasia task force or the board as defined in the rules of the board.

(b) Any person who is trained prior to December 31, 1992, in euthanasia methods, in a course approved by the board, may be certified upon presentation of evidence of such training to either the euthanasia task force or the board.

(10) "Certified veterinary technician" means a person who has fulfilled the certification requirements prescribed by board rule and has been certified by the board to practice veterinary technology in this state.

(11) "Consultation" means a deliberation between two (2) or more veterinarians concerning the diagnosis of a disease or the proper management of the case.

(12) "Credit hour" means fifty (50) minutes of participation in an accredited continuing education activity.

(13) "Dentistry" is the practice of veterinary medicine and means the application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue. Dentistry includes, but is not limited to:

(a) "Preventive dental procedures" including, but not limited to, the removal of calculus, soft deposits, plaque, stains, and floating to shape the teeth above the gum line or the smoothing, filing or polishing of tooth surfaces above the gum line; and

(b) "Operative dentistry/oral surgery" or any other dental procedure that invades the hard or soft oral tissue including a procedure that alters the structure of one (1) or more teeth, or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth.

(14) "Direct supervision" means the supervisor is on the premises where the animal is being treated, is quickly and easily available and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(15) "Discipline" means board action including, but not limited to:

(a) Refusing to issue, renew or reinstate a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(b) Denial, revocation, suspension, sanction, probation or voluntary surrender of a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(c) The ability to enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia agencies and certified euthanasia technicians;

(d) The ability to bring an administrative or civil action against any person in or outside of this state who practices veterinary medicine, veterinary technology or who performs euthanasia within this state.

(16) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(17) "Emergency veterinary facility" means any facility with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation or that displays to the public any sign, card, or advertisement that indicates it is an emergency veterinary clinic or hospital. An emergency veterinary facility may be an independent after-hours service, an independent twenty-four (24) hour service, or it may be part of a full-service veterinary medical facility.

(18) "Euthanasia task force" means a task force established by the board for the purposes of training, examining, certifying and inspecting certified euthanasia agencies and certified euthanasia technicians.

(19) "Extra label use" means the actual or intended use of a human or veterinary drug in an animal in a manner that is not in accordance with the drug's labeling.

(20) "Floating" means shaping the posterior (cheek) teeth and the incisors (cutting teeth) in horses, mules and donkeys through the use of hand floats, rasps, burs, mechanical files or other file-like instruments to re-

store balance, allow more efficient mastication, and reduce pain and trauma to the periodontal tissues.

(21) "Herd, litter or flock" of animals means animals managed as a group for purposes including, but not limited to, breeding, sale, show or food production.

(22) "Immediate supervision" means the supervisor is in the immediate area, in audible and visual range of the animal patient and the person treating the patient and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(23) "In good standing" means that an applicant:

(a) Has not been the recipient of any administrative penalties regarding his practice of veterinary medicine including, but not limited to, fines, formal reprimands, license suspensions or revocations (except for license revocations for nonpayment of license renewal fees) or probationary limitations, or has not entered into any consent agreement or negotiated settlement that contains conditions placed by a board on his professional conduct and practice, including any voluntary surrender of a license; and

(b) Has never had his United States drug enforcement administration privileges restricted or revoked; and

(c) Is not currently under investigation by another veterinary licensing authority for acts which would provide a basis for disciplinary action in this state, as determined by the board; and

(d) Has no physical or mental impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public; and

(e) Has not been convicted of a felony as defined in chapter 1, title 18, Idaho Code; and

(f) Has no criminal conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the board in sufficient detail to enable the board to make a determination whether the record or charge is substantially related to the practice of veterinary medicine.

(24) "Indirect supervision" means the supervisor is not on the premises but is available for immediate contact by telephone, radio or other means, has given either written or oral instructions for treatment of the animal patient, the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires, and the animal, if previously anesthetized, has recovered to the point of being conscious and sternal.

(25) "Legend/Prescription drug" means any drug which, under federal law, regulation or rule, is required, prior to being distributed or delivered, to be labeled with one (1) of the following statements: "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian," or "Caution: Federal law prohibits dispensing without a prescription," or "RX Only," or a drug which is required by any applicable state or federal law, rule or regulation to be distributed or dispensed pursuant to a prescription only, or is restricted to use by licensed practitioners only.

(26) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.

(27) "Malpractice" means, but is not limited to:

(a) Treatment in a manner contrary to accepted veterinary practices and with injurious results; or

(b) Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of the professional practice of veterinary medicine; or

(c) Failure to provide adequate supervision, except in an emergency situation; or

(d) Allowing an unqualified individual to perform a procedure that is part of the practice of veterinary medicine; or

(e) The negligent practice of veterinary medicine, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death.

(28) "Medical incompetence" means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.

(29) "Mobile clinic" means a vehicle including, but not limited to, a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(30) "On-call emergency service" means a veterinary medical facility that is available to provide emergency veterinary services as requested if a veterinarian is available.

(31) "Owner/Ownership" means ownership as defined by the laws of property and ownership, chapter 1, title 55, Idaho Code, and chapter 1, title 73, Idaho Code.

(32) "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(33) "Physical or mental incompetence" means the veterinarian's ability to practice veterinary medicine with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other substance, or as a result of any mental or physical disability.

(34) "Practice of veterinary medicine" in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine and means:

(a) To directly or indirectly diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions; including the prescription or administration of any drug, medicine, biologic, apparatus application, anesthetic or other therapeutic or diagnostic substance or technique, or the use of any obstetrical procedure or any manual or mechanical procedure for artificial insemination, for testing or examining for pregnancy, fertility evaluation, embryo transplant, grading of fresh semen, or to render advice or recommendation with regard to any of the above.

(b) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subsection (34) (a) of this section.

(c) To use any title, words, abbreviations or letter in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subsection (34) (a) of this section, except where such person is a licensed veterinarian.

(35) "Professional supervision" means the supervisor is in daily contact by telephone, radio or other means with the temporary licensee.

(36) "Referral" means the transfer of responsibility for diagnosis and treatment from the referring veterinarian to the receiving veterinarian, or from the referring veterinarian to the board-certified specialist, or from the referring veterinarian to an allied health professional.

(37) "Regular employee" means a person who performs services for the animal's owner other than, or in addition to, feeding, boarding, castrating and dehorning, but does not include independent contractors or agents.

(38) "Supervision" means the action or process of directing activities or a course of action, and pertains to any and all employees of the veterinarian.

(39) "Supervisor" means an actively licensed veterinarian employing and utilizing the services of a temporary licensee, certified veterinary technician, veterinary technician, veterinary technician with a temporary certification, veterinary assistant, certified euthanasia technician, or as provided by rule. A supervisor shall be individually responsible and liable, regardless of the supervision provided, for all damages arising out of his own acts or omissions or for the performance of any acts and omissions pertaining to the practice of veterinary medicine that are delegated to the temporary licensee, certified veterinary technician, veterinary technician, veterinary assistant or certified euthanasia technician. Nothing herein shall be construed to deprive the board of its disciplinary authority with respect to the temporary licensees, certified veterinary technicians, veterinary technicians, veterinary assistants or certified euthanasia technicians.

(40) "Unethical or unprofessional conduct" means to knowingly engage in conduct of a character likely to deceive or defraud the public, false or misleading advertising or solicitation, obtaining any fee or compensation by fraud or misrepresentation, sharing office space and working in conjunction with any person illegally practicing veterinary medicine, employing either indirectly or directly an unlicensed or uncertified person to perform acts pertaining to the practice of veterinary medicine, except as provided by law or rule, or the violation of any law or rules adopted by the board pertaining to unethical or unprofessional conduct, or that provide a code of professional conduct to be followed and carried out by persons licensed or certified by the board.

(41) "Unlicensed practice" means:

(a) The practice of veterinary medicine in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, without a valid, unexpired, unrevoked, and unsuspended active license or certification in this state to do so, except as provided by law or rule; or

(b) Representing one's self through offerings, advertisements or use of professional titles or designations as being qualified to practice veterinary medicine.

(42) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from an accredited or approved school of veterinary medicine or as otherwise provided by law or rule.

(43) "Veterinarian on call" means a veterinarian is not present at the veterinary medical facility, but is able to respond within a reasonable time to requests for emergency veterinary services.

(44) "Veterinarian on premises" means a veterinarian is present at the veterinary medical facility and is prepared and qualified to render veterinary services.

(45) "Veterinary medical facility" means any premises, office, unit, structure, mobile unit, or area utilized for the practice of veterinary medicine other than the premises of an owner when used for treatment of the owner's animal.

(46) "Veterinary technician" means a person who has graduated from a veterinary technology program accredited or approved by the council on education of the American veterinary medical association, or other accrediting agency approved by the board, or a person who has received equivalent training as set forth in the rules of the board.

(47) "Veterinary technology" means the performance of services within the practice of veterinary medicine by a person employed by a licensed veterinarian to perform duties that require an understanding of veterinary medicine in order to carry out the orders of the veterinarian. Veterinary technology does not include prognosis, diagnosis, operative dentistry, deliberate tooth extraction procedures or the prescribing of treatment or performing surgery of any kind.

Approved April 1, 2009.

CHAPTER 83
(H.B. No. 126)

AN ACT

RELATING TO VETERINARIANS; AMENDING CHAPTER 21, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-2108, IDAHO CODE, TO REQUIRE THAT ALL APPLICANTS FOR ORIGINAL LICENSURE, CERTIFICATION AND REINSTATEMENT SUBMIT TO A CERTAIN CRIMINAL BACKGROUND CHECK AND TO PROVIDE PROCEDURES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 21, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-2108, Idaho Code, and to read as follows:

54-2108. CRIMINAL BACKGROUND CHECKS FOR LICENSURE. (1) All applicants for original licensure or certification, or for reinstatement after the license or certification has lapsed pursuant to section 54-2112(3), Idaho Code, must submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database.

(2) For purposes of complying with this section, each such applicant must:

(a) Submit to the Idaho board of veterinary medicine a full set of the applicant's fingerprints for forwarding to the Idaho state police for appropriate processing by the Idaho state police and the federal bureau of investigation; and

(b) Submit to the Idaho board of veterinary medicine for forwarding to the Idaho state police and the federal bureau of investigation the full amount of the processing fees charged by these agencies.

(3) This section shall apply to individuals only. This section shall not apply to entities applying for a certificate as a certified euthanasia agency.

Approved April 1, 2009.

CHAPTER 84
(H.B. No. 127)

AN ACT

RELATING TO VETERINARIANS; AMENDING SECTION 54-2101, IDAHO CODE, TO ADD ANIMALS AS A GROUP TO BE SAFEGUARDED BY THE STATE AND TO REVISE THE MEANS TO ACCOMPLISH POLICY OBJECTIVES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2101, Idaho Code, be, and the same is hereby amended to read as follows:

54-2101. DECLARATION OF POLICY. This chapter is enacted as an exercise of the power of the state to promote the public health, safety and welfare by safeguarding the people and animals of this state ~~against incompetent, dishonest or unprincipled practitioners of veterinary medicine~~ by establishing and enforcing professional standards in the licensure and regulation of veterinary health professionals. It is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this chapter.

Approved April 1, 2009.

CHAPTER 85
(H.B. No. 154, As Amended)

AN ACT

RELATING TO IDAHO STATE POLICE; AMENDING SECTION 49-2427, IDAHO CODE, TO REVISE PROVISIONS RELATING TO IDENTIFICATION OF CERTAIN STATE POLICE VEHICLES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-2427, Idaho Code, be, and the same is hereby amended to read as follows:

49-2427. IDENTIFICATION OF STATE POLICE VEHICLES USED FOR HIGHWAY PATROL. Every motor vehicle other than motorcycles, owned by the state of Idaho and used as a state police highway patrol vehicle shall be marked as provided by section 49-2426, Idaho Code, and shall in addition, be painted with a black body ~~with a white top~~ and shall be identified in one (1) of the following manners:

- (1) By having a white stripe, at least six (6) inches in width, ~~painted~~ applied completely around the vehicle;
- (2) By having a blue light mounted on the top of the vehicle which must be visible from any direction; or
- (3) By having two (2) white stripes at least one and one-half (1 1/2) inches in width ~~painted~~ applied from the center point of the hood across the hood on each side and extending diagonally down to the bottom of the doors on each side of the vehicle. No other state agency, person, or local unit of government shall have any vehicle ~~which is painted~~ with a stripe or stripes from the center point of the hood across the hood on each side and extending diagonally down to the bottom of the doors on each side of the vehicles.

Approved April 1, 2009.

CHAPTER 86
(H.B. No. 179)

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-301, IDAHO CODE, TO PROVIDE FOR THE TESTAMENTARY APPOINTMENT OF A GUARDIAN FOR A DEVELOPMENTALLY DISABLED PERSON AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 66-404, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR CERTAIN GUARDIAN-

SHIP APPOINTMENTS BY WILL; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE THAT IF AN APPOINTMENT OF A GUARDIAN IS MADE BY WILL, SUCH APPOINTMENT SHALL BE ENTITLED TO PREFERENCE AS THE GUARDIAN IF THE PERSON SO APPOINTED BY WILL IS CAPABLE OF SERVING ON BEHALF OF THE RESPONDENT AND THE COURT FINDS THAT IT IS NOT IN THE BEST INTERESTS OF THE RESPONDENT TO APPOINT A DIFFERENT PERSON AS GUARDIAN.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-5-301, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON. (a) The parent of an incapacitated person or developmentally disabled person may by will appoint a guardian of the incapacitated person or developmentally disabled person. A testamentary appointment by a parent becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person or developmentally disabled person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person or developmentally disabled person may by will appoint a guardian of the incapacitated person or developmentally disabled person. The appointment becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person or developmentally disabled person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this Part.

(e) If the appointment by will is for a developmentally disabled person and there is an existing guardianship proceeding under chapter 4, title 66, Idaho Code, in which the decedent was the sole guardian, the guardian appointed by will must also give seven (7) days' written notice of his intention to file an acceptance of appointment to any then serving guardian ad litem for the developmentally disabled person in such proceeding and to the department of health and welfare for the region in which the proceeding was brought.

(f) If the appointment by will is for an incapacitated person for whom there is an existing guardianship proceeding in which the decedent was the sole guardian, the guardian appointed by will must also give seven (7) days' written notice of his intention to file an acceptance of appointment to any then serving guardian ad litem for the incapacitated person in such proceeding.

SECTION 2. That Section 66-404, Idaho Code, be, and the same is hereby amended to read as follows:

66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVATORS. (1) A developmentally disabled person or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian and/or conservator.

(2) The petition shall:

(a) State the names and addresses of the persons entitled to notice under subsection (4) of this section;

(b) Describe the impairments showing the respondent is developmentally disabled, the respondent's ability to receive, evaluate and communicate information, and the respondent's ability to manage financial resources and meet essential requirements for physical health or safety;

(c) State the nature and scope of guardianship and/or conservatorship services sought; ~~and~~

(d) Describe the respondent's financial condition, including significant assets, income and ability to pay for the costs of judicial proceedings; and

(e) State if the appointment is made by will pursuant to section 15-5-301, Idaho Code, and the name(s) and address(es) of the person(s) named in the will to be guardian.

(3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney to represent the respondent in the proceedings unless the respondent has an attorney, and authorize an evaluation committee to examine the respondent, interview the proposed guardians and/or conservators and report to the court in writing. The report shall contain:

(a) A description of the nature and extent of the evaluation and the alleged impairments, if any;

(b) A description of the respondent's mental, emotional and physical condition; educational status; and adaptive and social skills;

(c) A description of the services, if any, needed by the respondent to meet essential requirements for physical health and safety, and/or manage financial resources;

(d) A recommendation regarding the type and extent of guardianship or conservatorship assistance, if any, required by the respondent and why no less restrictive alternative would be appropriate;

(e) An opinion regarding the probability that the extent of the respondent's disabilities may significantly lessen, and the type of services or treatment which may facilitate improvement in the respondent's behavior, condition, or skills;

(f) The respondent's preference, if any, regarding the person or persons to be appointed as guardian and/or conservator;

(g) The suitability of the person or persons proposed as guardian and/or conservator; and

(h) The signature of each member of the evaluation committee with a statement of concurrence or nonconcurrence with the findings and any dissenting opinions or other comments of the members.

(4) Notice of the time and place of the hearing on the petition together with a copy of the petition shall be served no less than ten (10) days before the hearing on:

(a) The respondent;

(b) The respondent's spouse, parents and adult children, or if none, the respondent's closest relative, if any can be found; and

(c) Any person who is currently serving as guardian, conservator or who is providing care for the respondent.

Notice shall be served personally if the person to be served can be found within the state. If the person to be served cannot be found within the

state, service shall be accomplished by registered mail to such person's last known address.

(5) The respondent is entitled to be present at the hearing in person, to present evidence, call and cross-examine witnesses, and to see or hear all evidence in the proceeding.

(6) At the hearing the court shall:

(a) Determine whether the respondent is developmentally disabled;

(b) Evaluate the respondent's ability to meet essential requirements for physical health or safety and manage financial resources;

(c) Evaluate the ability of the proposed guardian and/or conservator to act in the respondent's best interests to manage the respondent's financial resources and meet essential requirements for the respondent's physical health or safety;

(d) Determine the nature and scope of guardianship or conservatorship services necessary to protect and promote the respondent's well-being; and

(e) Evaluate the ability of the respondent or those legally responsible to pay the costs associated with the judicial proceedings and fix responsibility therefor.

SECTION 3. That Section 66-405, Idaho Code, be, and the same is hereby amended to read as follows:

66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(3) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent. If an appointment of a guardian is made by will pursuant to section 15-5-301, Idaho Code, such appointment shall be entitled to preference as the guardian under this chapter, if the person so appointed by will is capable of serving on behalf of the respondent and the court finds that it is not in the best interests of the respondent to appoint a different person as guardian.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(1) (a) through (d), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least annually. In addition to such other requirements imposed by law or order, the report shall include:

- (a) A description of the respondent's current mental, physical and social condition;
- (b) The respondent's present address and living arrangement;
- (c) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;
- (d) A description of services being provided the respondent;
- (e) A description of significant actions taken by the guardian or conservator during the reporting period;
- (f) Any significant problems relating to the guardianship or conservatorship;
- (g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and
- (h) A description of the need for continued guardianship or conservatorship services.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section 39-4504(1) (g), Idaho Code.

(8) A guardian appointed under this chapter may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

- (a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or
- (b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.

(9) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such information to adult protective services or to the Idaho protection and advocacy system for people with developmental disabilities, who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided.

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that

the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

- (a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;
- (b) Consent to experimental surgery, procedures or medications; or
- (c) Delegate the powers granted by the order.

Approved April 1, 2009.

CHAPTER 87
(H.B. No. 192)

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 59, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO STATE THE PURPOSE AND INTENT, TO DEFINE TERMS, TO PROVIDE APPLICABILITY AND SCOPE, TO REQUIRE NOTICE OF RIGHT TO EXTERNAL REVIEW, TO PROVIDE FOR THE REQUEST FOR AN EXTERNAL REVIEW, TO REQUIRE THE EXHAUSTION OF AN INTERNAL GRIEVANCE PROCESS, TO PROVIDE A STANDARD EXTERNAL REVIEW, TO PROVIDE AN EXPEDITED EXTERNAL REVIEW, TO PROVIDE FOR THE BINDING NATURE OF AN EXTERNAL REVIEW DECISION, TO PROVIDE FOR APPROVAL OF INDEPENDENT REVIEW ORGANIZATIONS, TO PROVIDE MINIMUM QUALIFICATIONS FOR INDEPENDENT REVIEW ORGANIZATIONS, TO HOLD HARMLESS INDEPENDENT REVIEW ORGANIZATIONS, TO PROVIDE EXTERNAL REVIEW REPORTING REQUIREMENTS, TO PROVIDE FUNDING OF EXTERNAL REVIEW, TO PROVIDE DISCLOSURE REQUIREMENTS AND TO PROVIDE SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 59, Title 41, Idaho Code, and to read as follows:

CHAPTER 59
IDAHO HEALTH CARRIER EXTERNAL REVIEW ACT

41-5901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Health Carrier External Review Act."

41-5902. PURPOSE AND INTENT. The purpose of this chapter is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of a final adverse benefit determination, as defined in this chapter.

41-5903. DEFINITIONS. For purposes of this chapter:

(1) "Administrative record" means all nonprivileged documents, records or other health information which was submitted, considered, generated or relied upon by the health carrier in the course of making the adverse benefit determination, including, but not limited to, documents, records or other information that constitutes the plan's policy statements or guidance concerning the denied treatment or benefit, all records provided by the covered person or the covered person's medical care provider related to the denied treatment or benefit, all records provided to an independent review organization as part of the independent review of the denied treatment or benefit and the opinion issued by the independent review organization.

(2) "Adverse benefit determination" means a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity or has been determined to be an investigational service and the requested service or payment for the service is therefore terminated, denied or reduced.

(3) "Ambulatory review" means utilization review of health care services performed or provided in an outpatient setting.

(4) "Authorized representative" means:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.

(5) "Best evidence" means evidence based on randomized clinical trials.

(a) If randomized clinical trials are not available, then cohort studies or case-control studies;

(b) If studies in paragraph (a) of this subsection (5) are not available, then case-series.

(6) "Case-control study" means a retrospective evaluation of two (2) groups of patients with different outcomes to determine which specific interventions the patients received.

(7) "Case management" means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted or other health conditions.

(8) "Case-series" means an evaluation of a series of patients with a particular outcome, without the use of a control group.

(9) "Certification" means a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other health care service has been reviewed and, based on the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care and effectiveness.

(10) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services.

(11) "Cohort study" means a prospective evaluation of two (2) groups of patients with only one (1) group of patients receiving a specific intervention(s).

(12) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(13) "Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms and conditions of a health benefit plan.

(14) "Covered person" means a policyholder, subscriber, enrollee or other individual participating in a health benefit plan. A covered person includes the authorized representative of the covered person.

(15) "Director" means the director of the Idaho department of insurance.

(16) "Discharge planning" means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

(17) "Disclose" means to release, transfer or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information.

(18) "Evidence-based standard" means the conscientious, explicit and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(19) "Expedited external review" is the procedure available for urgent care requests for external review.

(20) "Expert" means a specialist with experience in a specific area about the scientific evidence pertaining to a particular service, intervention or therapy.

(21) "Facility" means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers and rehabilitation and other therapeutic health settings.

(22) "Final adverse benefit determination" means an adverse benefit determination, as defined in section 41-5903(2), Idaho Code, involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's internal grievance process procedures as set forth in the covered person's health benefit plan.

(23) "Health benefit plan" means a policy, contract, certificate or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(24) "Health care professional" means a physician or other health care practitioner licensed, accredited or certified to perform specified health care services consistent with state law.

(25) "Health care provider" or "provider" means a health care professional or a facility.

(26) "Health care services" means services for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease.

(27) "Health carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a disability insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health care services.

(28) "Health information" means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

- (a) The past, present or future physical, mental or behavioral health or condition of an individual or a member of the individual's family;
- (b) The provision of health care services to an individual; or
- (c) Payment for the provision of health care services to an individual.

(29) "Independent review organization" means an entity that conducts independent external reviews of final adverse benefit determinations.

(30) "Investigational" means the definition provided in the covered person's health benefit plan; if the health benefit plan does not provide a definition of "investigational," it shall be defined as follows: Any treatment, procedure, facility, equipment, drug, device or commodity, regardless of its medical necessity, which is experimental, or in the early developmental stage of medical technology, for which there are no randomized clinical trials or, absent such trials, for which there are no cohort studies or case-control studies or, absent such studies, then for which there is no case-series. The determination by the health carrier will be based on objective data and information obtained by the health carrier and reviewed, by competent medical personnel, according to the following:

(a) The technology has final approval from the appropriate government regulatory bodies;

(b) Medical or scientific evidence regarding the technology is sufficiently comprehensive to permit well substantiated conclusions concerning the safety and effectiveness of the technology;

(c) The technology's overall beneficial effects on health outweigh the overall harmful effects on health; and

(d) The technology is as beneficial as any established alternative.

When used under the usual conditions of medical practice, the technology should be reasonably expected to satisfy the criteria of paragraphs (c) and (d) of this subsection (30).

(31) "Medically necessary" or "Medical necessity" means the definition provided in the covered person's health benefit plan; if the covered person's health benefit plan does not define "medically necessary" or "medical necessity," these terms shall mean health care services and supplies that a physician or other health care provider, exercising prudent clinical judgment, would provide to a covered person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

(a) In accordance with generally accepted standards of medical practice;

(b) Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the covered person's illness, injury or disease;

(c) Not primarily for the convenience of the covered person, physician or other health care provider; and

(d) Not more costly than an alternative service or sequence of services or supply, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the covered person's illness, injury or disease.

For these purposes, "generally accepted standards of medical practice" means standards that are based on credible medical or scientific evidence.

(32) "Medical or scientific evidence" means evidence found in the following sources:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia and other medical literature that meet the criteria of the national institutes of health's library of medicine for indexing in index medicus (MEDLINE) and elsevier science ltd. for indexing in excerpta medicus (EMBASE);

(c) Medical journals recognized by the U.S. secretary of health and human services under section 1861(t)(2) of the federal social security act;

(d) The following standard reference compendia:

- (i) The American hospital formulary service - drug information;
- (ii) Drug facts and comparisons;
- (iii) The United States pharmacopoeia - drug information; and
- (iv) The American dental association accepted dental therapeutics.

(e) Findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

- (i) The federal agency for healthcare research and quality;
- (ii) The national institutes of health;
- (iii) The national cancer institute;
- (iv) The national academy of sciences;
- (v) The centers for medicare and medicaid services;
- (vi) The federal food and drug administration; and
- (vii) Any national board recognized by the national institutes of health for the purpose of evaluating the medical value of health care services; or

(f) Any other medical or scientific evidence that is comparable to the sources listed in paragraphs (a) through (e) of this subsection (32).

(33) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing.

(34) "Post service review" means a review of medical necessity conducted after services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding or adjudication for payment.

(35) "Pre-service review" means utilization review conducted prior to an admission or a course of treatment.

(36) "Protected health information" means health information:

- (a) That identifies an individual who is the subject of the information; or
- (b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(37) "Randomized clinical trial" means a controlled, prospective study of patients who have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time.

(38) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

(39) "Urgent care request" means any pre-service or concurrent care claim for medical care or treatment for which application of the time periods for making a regular external review determination:

- (a) Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function;
- (b) In the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the disputed care or treatment; or
- (c) The treatment would be significantly less effective if not promptly initiated.

The opinion of the covered person's treating health care professional with knowledge of the covered person's medical condition that a request is an urgent care request should be treated with deference.

(40) "Utilization review" means a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy or efficiency of health care services, procedures or settings. Techniques may include ambulatory review, pre-service review, second opinion, certification, concurrent review, case management, discharge planning or post service review.

(41) "Utilization review organization" means an entity that conducts utilization review, other than a health carrier performing a review for its own health benefit plans.

41-5904. APPLICABILITY AND SCOPE. (1) Except as provided in subsection (2) of this section, this chapter shall apply to all health carriers' final adverse benefit determinations which involve an issue of medical necessity or investigational service or supply.

(2) The provisions of this chapter shall not apply to a plan, policy or certificate that provides coverage only for a specified disease, specified accident or accident-only coverage; nor shall this chapter apply to a credit, dental, disability income, hospital indemnity, long-term care insurance, vision care, limited benefit health plans or any other limited supplemental benefit; nor shall this chapter apply to a medicare advantage plan or medicare supplemental policy of insurance, as defined by the director by rule, coverage under a plan through medicare, medicaid, or the federal employees health benefits program, any coverage issued under chapter 55, title 10, of the United States Code and any coverage issued as supplemental to that coverage; nor shall this chapter apply to any coverage issued as supplemental to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis; nor shall this chapter apply to a single employer self-funded employee benefit plan subject to and operated in compliance with the employee retirement income security act of 1974 (ERISA).

(3) The availability or use of external review pursuant to this chapter shall not alter the standard of review used by a court of competent jurisdiction when adjudicating the health carrier's final adverse benefit determination.

41-5905. NOTICE OF RIGHT TO EXTERNAL REVIEW. (1) If at the conclusion of the health carrier's internal grievance process the decision is adverse to the covered person, based upon a determination that the service or supply to be provided or which was provided did not meet medical necessity criteria or is investigational, the health carrier shall notify the covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 41-5908, 41-5909 or 41-5910, Idaho Code, and include the appropriate statements and information set forth in subsection (2) of this section at the same time the health carrier sends written notice of the final adverse benefit determination.

(2) The director may prescribe by rule the form and content of the notice required under this section, which shall include:

(a) The following, or substantially equivalent, language:

"We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity of your health care service or supply, or your health care service or supply was denied based upon a determination that it was investigational. You may request an external

review by submitting a written request to the department of insurance."

The notice shall include contact information for the department of insurance, including the website, address and telephone number.

(b) If the adverse benefit determination is for a pre-service or concurrent service and was denied based upon a failure to meet medical necessity criteria or because the service was determined to be investigational, the health carrier shall notify the covered person of the right to an expedited external review if the request is an urgent care request. The notification shall include the definition of urgent care request.

(c) The health carrier shall include a copy of the description of both the standard and expedited external review procedures the health carrier is required to provide pursuant to section 41-5916, Idaho Code, highlighting the provisions in the external review procedures that give the covered person the opportunity to submit additional information, and include any forms used to process an external review.

(d) The health carrier shall include an authorization form, or other document approved by the director, that complies with the requirements of 45 CFR section 164.508, by which the covered person, for purposes of conducting an external review pursuant to this chapter, authorizes the health carrier and the covered person's treating health care providers to disclose protected health information, including medical records, concerning the covered person that are pertinent to the external review. Until the director receives this form from the covered person, duly executed, the external review process is stayed and the health carrier has no obligations under this chapter.

41-5906. REQUEST FOR EXTERNAL REVIEW. A covered person may make a request for an external review of a final adverse benefit determination. Except for a request for an expedited external review as set forth in section 41-5909, Idaho Code, all requests for external review shall be made in writing to the director. The director may prescribe by rule the form and content of external review requests required to be submitted under this section. The director shall prescribe by rule the amount of the administrative filing fee, if any, to be paid by the covered person when the external review request is submitted.

41-5907. EXHAUSTION OF INTERNAL GRIEVANCE PROCESS. (1) Except as provided in subsection (2) of this section, a request for an external review pursuant to section 41-5908, 41-5909 or 41-5910, Idaho Code, shall not be made until the covered person has exhausted the health carrier's internal grievance process.

(a) A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of this section, if the covered person:

(i) Has filed and completed a grievance, involving an adverse benefit determination, according to the terms and conditions of the covered person's health benefit plan; or

(ii) Except to the extent the covered person requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within thirty-five (35) days following the date the covered person filed the grievance with the health carrier, or the covered person filed a grievance on an urgent care request on a pre-service or concurrent care adverse benefit determination and has not received a determination from the health carrier within three (3) business days after filing.

(b) A request for an external review of an adverse benefit determination may be made before the covered person has exhausted the health

carrier's internal grievance procedures as set forth in the health carrier's grievance appeal process whenever the health carrier agrees to waive the exhaustion requirement.

(2) If the requirement to exhaust the health carrier's internal grievance procedures is waived under subsection (1) (b) of this section, the covered person may file a request in writing for a standard external review, or where appropriate, an expedited external review.

41-5908. STANDARD EXTERNAL REVIEW. (1) Within four (4) months after the date of issuance of a notice of a final adverse benefit determination pursuant to section 41-5905, Idaho Code, a covered person may file a request for an external review with the director. The request shall be made on such form as may be designated by the director.

(2) Within seven (7) days after the date of receipt of a request for external review pursuant to subsection (1) of this section, the director shall send a copy of the request to the health carrier.

(3) Within fourteen (14) days following the date of receipt of the copy of the external review request from the director pursuant to subsection (2) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time the health care service was requested or, in the case of a post service review, was a covered person in the health benefit plan at the time the health care service was provided;

(b) The health care service that is the subject of the final adverse benefit determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity or the service or supply is investigational;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the covered person's health benefit plan, unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 41-5907, Idaho Code; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under section 41-5905(2) (d), Idaho Code.

(4) Within five (5) business days after completion of the preliminary review, the health carrier shall notify the director and covered person in writing whether the request is complete and whether the request is eligible for external review.

(5) If the request is not complete, the health carrier shall inform the covered person and the director in writing and include in the notice what information or materials are needed to make the request complete.

(6) If the request is not eligible for external review, the health carrier shall inform the covered person and the director in writing and include in the notice the reasons for its ineligibility.

(7) The director may prescribe by rule the form for the health carrier's notice of initial determination under this section and any supporting information to be included in the notice. The notice of initial determination shall include a statement informing the covered person that a health carrier's initial determination that the external review request is ineligible for review, may be appealed to the director.

(8) The director may determine that a request is eligible for external review notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review. The director's decision shall be made in accordance with the applicable

procedural requirements of this chapter and the terms and conditions of the covered person's health benefit plan.

(9) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to subsection (3) of this section, within seven (7) days after the date of receipt of the notice, the director shall:

(a) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 41-5911, Idaho Code, to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(b) Notify, in writing, the covered person of the request's eligibility and acceptance for external review.

(c) The director shall include in the notice provided to the covered person a statement that the covered person may submit, in writing, to the assigned independent review organization within seven (7) days following the date of receipt of the notice provided pursuant to subsection (9) (b) of this section, additional information that the independent review organization shall consider when conducting the external review.

(10) In reaching a decision, the assigned independent review organization is not bound by the exercise of discretion or any decisions or conclusions reached during the health carrier's utilization review process or the health carrier's internal grievance process.

(11) Within fourteen (14) days after the date of receipt of the notice provided pursuant to subsection (9) (a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse benefit determination or final adverse benefit determination.

(12) Except as provided in subsection (13) of this section, failure by the health carrier or its utilization review organization to provide the documents and information within the time specified in subsection (11) of this section, shall not delay the conduct of the external review.

(13) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subsection (11) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse benefit determination or final adverse benefit determination.

(14) Within one (1) business day after making the decision to terminate the external review pursuant to subsection (13) of this section, the independent review organization shall notify the covered person, the health carrier and the director.

(15) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (11) of this section, and any other information submitted in writing to the independent review organization by the covered person pursuant to subsection (9) (c) of this section; provided however, that if the covered person does submit new information in writing to the internal review organization pursuant to subsection (9) (c) of this section, then the health carrier is entitled to seven (7) days following its receipt thereof to submit additional responsive information to the internal review organization.

(16) Upon receipt of any information submitted by the covered person pursuant to subsection (9) (c) of this section, the assigned independent review organization shall within one (1) business day forward the information to the health carrier.

(17) Upon receipt of the information, if any, required to be forwarded pursuant to subsection (16) of this section, the health carrier may reconsider its adverse determination or final adverse benefit determination that is the subject of the external review. Reconsideration by the health carrier

of its adverse determination or final adverse determination shall not delay or terminate the external review. The assigned independent review organization shall review all of the information and documents received pursuant to subsection (15) of this section.

(18) The external review may be terminated if the health carrier decides to reverse its final adverse benefit determination and provide coverage or payment for the health care service that is the subject of the final adverse benefit determination. Within two (2) business days after making the decision to reverse its final adverse benefit determination, the health carrier shall notify the covered person, the assigned independent review organization and the director in writing of its decision.

(19) In addition to the documents and information provided pursuant to subsection (11) of this section, the assigned independent review organization, to the extent the information or documents are available, shall consider the following in reaching a decision:

- (a) The covered person's medical records;
- (b) The attending health care professional's recommendation;
- (c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's treating provider;
- (d) The terms and conditions of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is controlled by the terms and conditions of coverage under the covered person's health benefit plan with the health carrier to the extent the health plan's terms and conditions are not in conflict with this chapter;
- (e) The most appropriate practice guidelines, which shall include the applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards and associations, health carrier's internal guidelines and medical policies;
- (f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization;
- (g) Medical or scientific evidence, as defined in section 41-5903 (32), Idaho Code;
- (h) The opinion of the independent review organization's clinical reviewer or reviewers after considering paragraphs (a) through (g) of this subsection (19) to the extent the information or documents are available.

(20) Within forty-two (42) days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the final adverse benefit determination to the covered person, the health carrier and the director. The independent review organization shall include in the notice:

- (a) A general description of the reason for the request for external review;
- (b) The date the independent review organization received the assignment from the director to conduct the external review;
- (c) The date the external review was conducted;
- (d) The date of its decision;
- (e) The principal reason or reasons for its decision, including an explanation of the scientific or clinical judgment applied to reach its decision;
- (f) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision; and
- (g) References to the terms and conditions of the health benefit plan at issue, including an explanation of how its decision is consistent with them.

(21) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the final adverse benefit determination and other circumstances, including conflict of interest concerns pursuant to section 41-5912, Idaho Code.

41-5909. EXPEDITED EXTERNAL REVIEW. (1) After having exhausted the health carrier's internal grievance process as provided in section 41-5907, Idaho Code, a covered person may make a request for an expedited external review of a pre-service or concurrent service adverse benefit determination based on medical necessity or investigational, where the requested service meets the definition of an urgent care request.

(2) Upon receipt of a request for an expedited external review, the director shall send a copy of the request to the health carrier.

(3) Upon receipt of the request pursuant to subsection (2) of this section, the health carrier shall determine, as soon as possible but not later than the second full business day thereafter, whether the carrier agrees that the request meets the reviewability requirements set forth in section 41-5908(3), Idaho Code. The health carrier shall notify the director and the covered person of its eligibility determination as soon as reasonably practicable but not later than one (1) business day after making the determination.

(a) The director may prescribe by rule the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(b) The notice of initial determination shall include a statement informing the covered person that a health carrier's initial determination that an external review request is ineligible for review, may be appealed to the director.

(4) The director may determine that a request is eligible for external review pursuant to section 41-5908(3), Idaho Code, notwithstanding a health carrier's initial determination that the request is ineligible, and require that it be referred for external review. In making a determination under this subsection (4), the director's decision shall be made in accordance with the applicable procedural requirements of this chapter and the terms and conditions of the covered person's health benefit plan.

(5) Upon receipt of the notice that the request meets the reviewability requirements, the director shall assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 41-5911, Idaho Code. The director shall notify the health carrier and the covered person of the name of the assigned independent review organization.

(6) In reaching a decision in accordance with subsection (9) of this section, the assigned independent review organization is not bound by the exercise of discretion or any decisions or conclusions reached during the health carrier's internal grievance process.

(7) Upon receipt of the notice from the director of the name of the independent review organization assigned to conduct the expedited external review pursuant to subsection (5) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse benefit determination and the final adverse benefit determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(8) In addition to the documents and information provided or transmitted pursuant to subsection (7) of this section, the assigned independent re-

view organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

- (a) The covered person's pertinent medical records;
- (b) The attending health care professional's recommendation;
- (c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's treating provider;
- (d) The terms and conditions of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is controlled by the terms and conditions of coverage under the covered person's health benefit plan with the health carrier to the extent the health plan's terms and conditions are not in conflict with this chapter;
- (e) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards and associations, the health carrier's internal guidelines and medical policies;
- (f) Any applicable clinical review criteria developed and used by the health carrier or its designated utilization review organization in making the adverse benefit determination;
- (g) Medical or scientific evidence, as defined in section 41-5903(32), Idaho Code;
- (h) The opinion of the independent review organization's clinical reviewer or reviewers after considering paragraphs (a) through (g) of this subsection (8) to the extent the information and documents are available.

(9) As expeditiously as the covered person's medical condition or circumstances require, but in no event more than seventy-two (72) hours after the date of receipt of the request for an expedited external review that meets the reviewability requirements set forth in section 41-5908(3), Idaho Code, the assigned independent review organization shall:

- (a) Make a decision to uphold or reverse the final adverse benefit determination; and
- (b) Notify the covered person, the health carrier and the director of the decision.

(10) If the notice provided pursuant to subsection (9) (b) of this section was not in writing, within forty-eight (48) hours after the date of providing that notice, the assigned independent review organization shall:

- (a) Provide written confirmation of the decision to the covered person, the health carrier and the director, which shall include an explanation of the scientific or clinical judgment for the determination addressing the medical necessity criteria as defined in this chapter or, where the appeal is based upon a denial of a service as investigational, addressing the criteria for determination of investigational status as defined in this chapter; and
- (b) Include the information set forth in section 41-5908(20), Idaho Code.

(11) Upon receipt of the notice of a decision pursuant to subsection (1) of this section reversing the final adverse benefit determination, the health carrier shall notify the director and the covered person of its eligibility determination as soon as reasonably practicable but not later than one (1) business day after making the determination.

(12) An expedited external review shall not be provided for post service final adverse benefit determinations.

(13) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review or-

ganizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the final adverse benefit determination and other circumstances, including conflict of interest concerns pursuant to section 41-5912, Idaho Code.

41-5910. BINDING NATURE OF EXTERNAL REVIEW DECISION. (1) For a health care benefit plan not subject to the employee retirement income security act of 1974 (ERISA), the external review decision is final and binding on the health carrier and on the covered person. No judicial action or proceeding arising out of the external review decision or the issues determined by the external review decision shall be permitted. For a health care benefit plan subject to ERISA, the external review decision is final and binding on the health carrier; however, should the covered person seek judicial review of the external review decision, then the external review record and decision shall be included as a part of the administrative record for the purpose of review by any court of competent jurisdiction.

(2) A covered person may not file a subsequent request for external review involving the same adverse benefit determination or final adverse benefit determination for which the covered person has already received an external review decision pursuant to this chapter.

41-5911. APPROVAL OF INDEPENDENT REVIEW ORGANIZATIONS. (1) The director shall approve independent review organizations eligible to be assigned on a random basis to conduct external reviews under this chapter.

(2) In order to be eligible for approval by the director under this section to conduct external reviews under this chapter an independent review organization shall:

(a) Except as otherwise provided in this section, be accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under section 41-5912, Idaho Code; and

(b) Submit an application for approval in accordance with subsection (4) of this section.

(3) The director shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4) Any independent review organization wishing to be approved to conduct external reviews under this chapter shall submit the application form and include with the form all documentation and information necessary for the director to determine whether the independent review organization satisfies the minimum qualifications established under section 41-5912, Idaho Code.

(5) The director shall publish prominently on the department of insurance website notice of a submitted application or reapplication by an independent review organization to provide external reviews under this chapter.

(a) Any person wishing to comment on an application shall have forty-two (42) days, from the publication of notice by the director, to provide written comments to the director on the application or reapplication submitted by an independent review organization.

(b) The director shall review and consider the written comments received in determining whether to approve the application or reapplication of an independent review organization.

(c) The director may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

(6) The director may charge an application fee that independent review organizations shall submit to the director with an application for approval and reapproval.

(7) An approval is effective for two (2) years, unless the director determines before its expiration that the independent review organization no longer satisfies the minimum qualifications established under section 41-5912, Idaho Code.

(8) The director shall maintain and periodically update a list of approved independent review organizations. Whenever the director determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under section 41-5912, Idaho Code, the director shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to conduct external reviews under this chapter. The director may also establish a standard flat fee schedule for each external review performed by the independent review organization.

(9) The director may promulgate administrative rules to carry out the provisions of this section.

41-5912. MINIMUM QUALIFICATIONS FOR INDEPENDENT REVIEW ORGANIZATIONS. (1) To be approved to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in this chapter that include, at a minimum:

(a) A quality assurance mechanism in place that:

(i) Ensures that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner;

(ii) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective;

(iii) Ensures the confidentiality of medical and treatment records and clinical review criteria; and

(iv) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of this chapter;

(b) A toll free telephone service to receive information on a twenty-four (24) hour day, seven (7) day a week basis related to external reviews that is capable of accepting, recording or providing appropriate instruction to incoming telephone callers during other than normal business hours; and

(c) An agreement to maintain and provide to the director the information set out in section 41-5914, Idaho Code.

(2) All clinical reviewers assigned by an independent review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(a) Be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(b) Be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition of the covered person;

(c) Hold a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized American medi-

cal specialty board in the area or areas appropriate to the subject of the external review; and

(d) Have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental or professional competence or moral character.

(3) In addition to the requirements set forth in subsection (1) of this section, an independent review organization may not own or control, be a subsidiary of or in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state or local trade association of health benefit plans, or a national, state or local trade association of health care providers.

(4) In addition to any other requirements, to be approved to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review, nor any clinical reviewer assigned by the independent organization to conduct the external review, may have a material professional, familial or financial conflict of interest with any of the following:

(a) The health carrier that is the subject of the external review;

(b) The covered person whose treatment is the subject of the external review;

(c) Any officer, director or management employee of the health carrier that is the subject of the external review;

(d) The health care provider, the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

(e) The facility at which the recommended health care service or treatment would be provided; or

(f) The developer or manufacturer of the principal drug, device, procedure or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(5) In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional, familial or financial conflict of interest for purposes of subsection (4) of this section, the director shall take into consideration situations where the independent review organization to be assigned to conduct an external review of a specified case, or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case, may have an apparent professional, familial or financial relationship or connection with a person described in subsection (4) of this section, but that the characteristics of that relationship or connection are such that they are not a material professional, familial or financial conflict of interest that results in the disapproval of the independent review organization or the clinical reviewer from conducting the external review.

(6) An independent review organization that is accredited by a nationally recognized private accrediting entity, which has independent review accreditation standards that the director has determined are equivalent to or exceed the minimum qualifications of this section, shall be presumed in compliance with this section to be eligible for approval under section 41-5911, Idaho Code.

(7) The director shall initially review and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section.

(8) Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the director in order for the director to determine whether the entity's standards are equivalent to or exceed the minimum qualifications established under this section.

(9) An independent review organization shall be unbiased. An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this section.

(10) Each independent review organization applying to the director to be approved shall include in its application its schedule of costs and fees for performing external reviews and shall file with the director any subsequent changes to its fee schedule. If the director finds that the proposed fees are excessive or unreasonable, the director shall disapprove the application or, if the review organization has already been approved, remove the organization from the list of eligible review organizations. An independent review organization may not impose charges for a review under this chapter that exceed those set forth on its schedule of fees filed with the director.

41-5913. HOLD HARMLESS FOR INDEPENDENT REVIEW ORGANIZATIONS. No independent review organization or clinical reviewer working on behalf of an independent review organization or an employee, agent or contractor of an independent review organization shall be liable in damages or otherwise to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to this chapter unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence; provided that the health carrier shall not be liable in damages or otherwise to any person for any opinions rendered or acts or omissions performed by the independent review organization, its employees, agents or performed by the independent review organization, its employees, agents or contractors within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to this chapter.

41-5914. EXTERNAL REVIEW REPORTING REQUIREMENTS. (1) An independent review organization assigned pursuant to this chapter to conduct an external review shall maintain written records in the aggregate for Idaho by health carrier on all requests for external review for which it conducted an external review during a calendar year and, upon request, submit a report to the director, as required under this section. Each independent review organization required to maintain written records on all requests for external review pursuant to this section for which it was assigned to conduct an external review shall submit to the director, upon request or at specified intervals, a report in the format specified by the director.

(2) The report shall include in the aggregate for Idaho for each health carrier:

- (a) The total number of requests for external review;
- (b) The number of requests for external review resolved and, of those resolved, the number resolved upholding the final adverse benefit determinations and the number resolved reversing the final adverse benefit determinations;
- (c) The average length of time for resolution;
- (d) A summary of the types of coverages or cases for which an external review was sought;
- (e) The number of external reviews pursuant to section 41-5908(18), Idaho Code, that were terminated as the result of a reconsideration by the health carrier of its final adverse benefit determination after the receipt of additional information from the covered person; and

(f) Any other information the director may reasonably request or require.

(3) The independent review organization shall retain the written records required pursuant to this section for at least five (5) years.

(4) Each health carrier shall maintain written records in the aggregate for Idaho for each type of health benefit plan offered by the health carrier on all requests for external review that the health carrier receives notice of from the director pursuant to this chapter.

(5) Each health carrier is required to maintain written records on all requests for external review pursuant to subsection (1) of this section and shall submit to the director, upon request or at specified intervals, a report in the format specified by the director. The report shall include in the aggregate for Idaho and by type of health benefit plan:

(a) The total number of requests for external review;

(b) From the total number of requests for external review reported, the number of requests determined eligible for a full external review; and

(c) Any other information the director may reasonably request or require.

(6) The health carrier shall retain the written records required pursuant to this section for at least five (5) years.

41-5915. FUNDING OF EXTERNAL REVIEW. The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the reasonable cost of the independent review organization for conducting the external review. The director may provide by rule for an administrative fee to offset the department's costs associated with external review to be paid by the covered person at the time he makes a request for external review.

41-5916. DISCLOSURE REQUIREMENTS. (1) Each health carrier shall include a summary description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage or other evidence of coverage it provides to covered persons. The disclosure shall be in a format prescribed by the director.

(2) The description required under subsection (1) of this section shall include:

(a) A statement that informs the covered person of the right of the covered person to file a request for an external review of a final adverse benefit determination with the director;

(b) An explanation that external review and, in certain circumstances, expedited external review are available when the final adverse benefit determination involves an issue of medical necessity or investigational service or supply;

(c) The website, telephone number and address of the director; and

(d) A statement informing the covered person that, when filing a request for an external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review including any judicial review of the external review decision pursuant to ERISA, if applicable.

(e) If the health plan is not subject to ERISA, a statement informing the covered person that the plan is not subject to ERISA and that if the covered person elects to request external review, the external review decision of the independent review organization shall be final and binding on both the covered person and the health carrier, as provided in section 41-5910, Idaho Code. If the health plan is subject to ERISA, the statement shall inform the covered person that the plan is subject to ERISA and that if the covered person elects to request external review, the external review decision of the independent review

organization shall be final and binding on the health carrier but not the covered person, as provided in section 41-5910, Idaho Code, and that the covered person may have the right to judicial review under ERISA in a court of competent jurisdiction.

41-5917. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 2. This chapter shall be in full force and effect for all covered plans issued or renewed on or after January 1, 2010.

Approved April 1, 2009.

CHAPTER 88
(H.B. No. 193)

AN ACT

RELATING TO SCHOOL DISTRICTS; AMENDING SECTION 33-309, IDAHO CODE, TO REMOVE A MANDATORY DUTY OF THE STATE BOARD OF EDUCATION, TO PROVIDE CERTAIN DISCRETIONARY AUTHORITY TO THE STATE BOARD AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-309, Idaho Code, be, and the same is hereby amended to read as follows:

33-309. LAPSED DISTRICTS -- ANNEXATION. (1) If the state board of education shall find any school district:

(a-) ~~h~~Has not operated its school for a period of one (1) school year~~;~~
~~or;~~

(b-) ~~±~~In which the average daily attendance during each term of not less than seven (7) months in the two (2) school years last past has been less than five (5) pupils~~;~~ or

(c-) ~~±~~For a period of not less than one (1) year last past has had an insufficient number of members on its board of trustees lawfully to conduct the business of the district~~;~~

the ~~said~~ state board of education ~~shall~~ may enter its order declaring any such district to be lapsed, and which district shall lapse as of the first day of July next following the date of said order.

(2) Upon entering its order declaring a school district lapsed pursuant to subsection (1) of this section, ~~t~~The state board of education shall ~~thereupon~~ designate some proper person a hearing officer to conduct a public hearing or hearings on the matter of annexing the lapsed district to a school district or districts contiguous thereto. The state board of education shall cause notice of such hearing or hearings to be published in a newspaper of general circulation in the area and the notice shall state the time and place of the hearing or hearings and the subject matter involved.

(3) Upon concluding any hearing or hearings the hearing officer shall make his report and recommendation to the state board of education, and the ~~said~~ state board shall thereafter order the lapsed area annexed to such contiguous district or districts as in the judgment of the ~~said~~ state board seems equitable and just. Any such annexation shall be effective as of the fifteenth day of August next following the date of the order of annexation.

(4) Whenever there is any outstanding unpaid bonded debt owed by the lapsed district, the state board of education shall, in its order of annexa-

tion, require the district, or one (1) of the districts, to which the lapsed area is annexed, to keep and maintain the bond register and to pay the principal and interest, when the same are due, out of the proceeds of any levy made for that purpose. The said order of annexation shall also provide for the transfer, or apportionment, to the annexing district or districts of the property and current liabilities of the lapsed district as in the judgment of the state board ~~of education~~ is equitable and just; provided, however, that if the lapsed district shall have excess of liquid assets over current liabilities, and if such lapsed district shall have any outstanding unpaid bonded debt, then and in that event such excess shall be ordered transferred to a fund for the payment of the principal of and interest on such debt.

(5) When annexation has been completed, as hereinabove authorized, the state board ~~of education~~ shall give notice of such annexation to the officers of the lapsed district, if any there be, and to the board of county commissioners of any county in which shall lie any district, the boundaries of which have been changed by the annexation of the lapsed area. The notice to any board of county commissioners shall be accompanied by a legal description of the boundaries of the district or districts as changed by the annexation.

Approved April 1, 2009.

CHAPTER 89
(H.B. No. 109)

AN ACT

RELATING TO THE IDAHO CONTRACTOR REGISTRATION ACT; AMENDING SECTION 54-5210, IDAHO CODE, TO REVISE PROVISIONS RELATING TO INFORMATION SUBMITTED FOR CONTRACTOR REGISTRATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-5210, Idaho Code, be, and the same is hereby amended to read as follows:

54-5210. APPLICATION FOR REGISTRATION. (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the board and which shall include the following information pertaining to the applicant:

- (a) Social security number for natural persons or employer tax identification number for other persons;
- (b) The name and address under which the applicant conducts business;
- (c) The name and address of each principal, member, partner, shareholder, or any other person claiming an ownership interest in the business entity for which registration is being applied for;
- (d) A certificate issued by an insurance company authorized to do business in the state of Idaho or other satisfactory proof that the applicant has procured and has in effect worker's compensation insurance or a statement by the contractor as to why such certificate or coverage is not required for the applicant;
- (e) A certificate issued by an insurance company authorized to do business in the state of Idaho that the applicant has procured and has in effect a general liability policy, including products and ~~continued~~ completed operations insurance covering the applicant's construction operations in the sum of not less than three hundred thousand dollars (\$300,000) single limit. The name of the insurance company, the insured and policy number shall be made available only to persons or their insurers stating that they possess a claim against the contractor;

(f) A statement of the type of construction to be undertaken by the applicant, or such other information as may be required by the board pursuant to administrative rules adopted by the board; and

(g) A statement that the applicant and each principal, member, partner, shareholder, or any other person claiming an ownership interest in the business entity for which registration is being applied for herein has never been denied, surrendered or had revoked a contractor's license or registration privilege in this or any other state or, if a license or registration privilege has been denied, surrendered or revoked in this or any other state, an explanation of any such denial, surrender or revocation.

(2) Along with such application, the applicant shall submit a registration fee as may be set by the board to cover its administrative and enforcement costs, not to exceed one hundred fifty dollars (\$150) per year.

(3) An application for registration that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and shall be subject to the provisions of that chapter as well as the administrative rules adopted by the board governing contested cases.

Approved April 1, 2009.

CHAPTER 90
(H.B. No. 184)

AN ACT

RELATING TO BAIL; REPEALING CHAPTER 29, TITLE 19, IDAHO CODE, RELATING TO BAIL; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 29, TITLE 19, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A STATEMENT OF POLICY, TO PROVIDE THE RIGHT TO BAIL AND LIMITATIONS, TO PROVIDE FOR BAIL, THE RELEASE ON RECOGNIZANCE AND CONDITIONS OF RELEASE, TO DEFINE TERMS, TO PROVIDE ADMISSION TO BAIL, TO PROVIDE FOR POSTING BAIL AND SUFFICIENT SURETIES, TO PROVIDE THAT CASH DEPOSITS SHALL BE APPLIED TO PAYMENTS OF FINES, FEES, COSTS AND RESTITUTION, TO PROVIDE FOR A PROPERTY BOND, TO PROVIDE FOR SUBSTITUTION OF SUFFICIENT SURETIES, TO PROVIDE FOR THE RELEASE OF DEFENDANT ON POSTING BAIL, TO PROVIDE FOR THE INCREASING AND REDUCING BAIL, TO PROVIDE FOR THE SURRENDER OF A DEFENDANT, TO PROVIDE FOR THE ARREST OF A DEFENDANT FOR SURRENDER, TO PROVIDE FOR THE FORFEITURE OF BAIL, TO PROVIDE FOR THE SETTING ASIDE OF AN ORDER OF FORFEITURE AND REINSTATING BAIL, TO PROVIDE FOR A MOTION TO SET ASIDE FORFEITURE, TO PROVIDE FOR REMITTANCE OF FORFEITURE AND PAYMENT OF BAIL, TO PROVIDE FOR THE REVOCATION OF BAIL AND VIOLATION OF CONDITIONS OF RELEASE, TO PROVIDE FOR THE REVOCATION OF BAIL AND INSUFFICIENT SURETY, TO PROVIDE AN ORDER OF RECOMMITMENT AND READMITTANCE TO BAIL, TO PROVIDE FOR THE EXONERATION OF BAIL AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 29, Title 19, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 29, Title 19, Idaho Code, and to read as follows:

CHAPTER 29
IDAHO BAIL ACT

19-2901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Bail Act."

19-2902. STATEMENT OF POLICY. (1) The legislature finds and declares that:

- (a) Bail, in criminal cases, is a constitutional right subject to certain limitations;
- (b) It is necessary to establish a statewide process to uniformly implement this right and the limitations.

(2) The purpose of this chapter is to provide a uniform and comprehensive statewide process for the administration of bail in criminal cases in order to:

- (a) Ensure the appearance of defendants before the courts;
- (b) Protect the right of defendants to bail, as constitutionally provided; and
- (c) Ensure the protection and safety of victims, witnesses and the public.

19-2903. RIGHT TO BAIL -- LIMITATIONS. Any person charged with a crime who is not released on his own recognizance is entitled to bail, as a matter of right, before a plea or verdict of guilty, except when the offense charged is punishable by death and the proof is evident or the presumption is great. In the discretion of the court, bail may be allowed in the following cases:

- (1) After the defendant is found guilty or pleads guilty and before sentencing;
- (2) While an appeal is pending from a judgment of conviction, an order withholding judgment or an order imposing sentence, except that a court shall not allow bail when the defendant has been sentenced to death or life imprisonment;
- (3) Upon a charge of a violation of the terms of probation; and
- (4) Upon a finding of a violation of the conditions of release pursuant to section 19-2919, Idaho Code.

19-2904. BAIL, RELEASE ON RECOGNIZANCE AND CONDITIONS OF RELEASE. The court may release a person on his own recognizance or set an amount of bail, and may impose any conditions of release. In making these determinations the court shall consider the following objectives:

- (1) Ensuring the appearance of the defendant;
- (2) Ensuring the integrity of the court process including the right of the defendant to bail as constitutionally provided;
- (3) Ensuring the protection of victims and witnesses; and
- (4) Ensuring public safety.

19-2905. DEFINITIONS. As used in this chapter, unless the context requires otherwise:

- (1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.
- (2) "Bail agent" means a producer licensed by the state of Idaho in the line of surety insurance who is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial criminal proceedings.
- (3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.
- (4) "Bench warrant" means a warrant issued by the court because the defendant failed to appear as ordered, failed to comply with a condition of release or the sureties are no longer sufficient.
- (5) "Cash deposit" means payment in the form of United States currency, money order, certified check, cashier's check or such other form of payment as provided by the rules of the supreme court.
- (6) "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its

bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature.

(7) "Conditions of release" means any reasonable restrictions, conditions or prohibitions placed upon the defendant's activities, movements, associations or residences by the court, excluding the court order requiring the defendant to appear in court.

(8) "Exoneration" means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond.

(9) "Forfeiture" means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited.

(10) "Order of recommitment" means an order of the court committing the defendant back to the custody of the sheriff.

(11) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship or any other business entity recognized by the state of Idaho.

(12) "Property bond" means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered.

(13) "Readmittance to bail" means an order of the court allowing the defendant to post new bail following an order of revocation.

(14) "Recommitment" means the return of the defendant to the custody of the sheriff following revocation or forfeiture of bail.

(15) "Reinstatement of bail" means an order of the court allowing the defendant to be released on the same bail previously posted that has been ordered forfeited.

(16) "Revocation of bail" means an order by the court revoking the defendant's release on bail.

(17) "Surety insurance company" means an admitted insurer authorized in the line of surety pursuant to title 41, Idaho Code.

(18) "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending.

19-2906. ADMISSION TO BAIL. Admission to bail is the order of a competent court that the defendant shall be released from actual custody of the sheriff upon posting bail.

19-2907. POSTING BAIL -- SUFFICIENT SURETIES. (1) The posting of bail consists of filing sufficient sureties with the court, as required by the court, to ensure the defendant's appearance. Sufficient sureties shall consist of any one (1) of the following:

- (a) A bail bond;
- (b) A property bond; or
- (c) A cash deposit.

(2) Although bail may be posted in the form of a cash deposit pursuant to the provisions of subsection (1) of this section, a defendant shall not be required to post bail in the form of a cash deposit.

19-2908. CASH DEPOSIT APPLIED TO PAYMENTS OF FINES, FEES, COSTS AND RESTITUTION. When bail has been posted by cash deposit and remains on deposit at the time of the judgment, the clerk of the court shall, under the direction of the court, apply the money in satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution that have been imposed against the defendant in any other criminal action, and after satisfying the fines, fees, costs and restitution, shall refund the surplus, if any, to the person posting the cash deposit.

19-2909. PROPERTY BOND. A property bond may be posted by the defendant or third person on behalf of the defendant. For real property to qualify as sufficient surety, it must be located in the state of Idaho and must have an equity value, after deducting the outstanding balance of any existing liens and encumbrances, in the amount of the bail set by the court plus anticipated collection costs. Acceptance of a property bond is in the discretion of the court. A property bond posted with and accepted by the court pursuant to this section, and recorded, shall constitute a consensual lien on the property pursuant to section 55-1005(3), Idaho Code. All fees shall be paid by the person posting the property bond. An order of the court exonerating the property bond shall extinguish the lien and cancel the promissory note. The property bond and the promissory note shall be in a form approved by the supreme court.

19-2910. SUBSTITUTION OF SUFFICIENT SURETIES. At any time before an order of forfeiture, the court may allow the defendant to substitute any type of surety identified in section 19-2907, Idaho Code, for the previously posted surety. Upon substitution, the previously posted surety shall be exonerated.

19-2911. RELEASE OF DEFENDANT ON POSTING BAIL. Upon the posting of bail in the amount set by the court, the defendant shall be released from the actual custody of the sheriff.

19-2912. INCREASING OR REDUCING BAIL. After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. If the amount is increased, the court shall order the defendant to be committed to the actual custody of the sheriff until bail is posted in the increased amount. Any previous bail posted in the case shall be exonerated by the court. If the defendant applies for a reduction of the amount of bail, notice of the application shall be served upon the attorney for the state and the person posting bail within five (5) business days.

19-2913. SURRENDER OF DEFENDANT. (1) At any time before forfeiture of bail, a surety insurance company or its bail agent or person posting a property bond or cash deposit may surrender the defendant to the sheriff of the county where the action is pending. Upon the surrender of the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

(2) At the time of surrender of the defendant to the sheriff, the surety insurance company or its bail agent or person posting a property bond or cash deposit shall provide the sheriff with a certificate of surrender.

(3) The surety insurance company or its bail agent or person posting a property bond or cash deposit shall, within five (5) business days of the surrender of the defendant, file with the court in which the action or appeal is pending the certificate of surrender and shall deliver a copy of the same to the attorney for the state. The court shall thereupon order the bail exonerated.

(4) At any time before forfeiture of bail, a defendant may surrender himself to the sheriff of the county where the action is pending. Upon surrender by the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

19-2914. ARREST OF DEFENDANT FOR SURRENDER. At any time before the exonerated of bail, the surety insurance company or its bail agent or the person posting a property bond or cash deposit may empower any person of suitable age and discretion to arrest the defendant at any place within the state

by signing an affidavit extending such authority in a form approved by the supreme court.

19-2915. FORFEITURE OF BAIL. (1) If without sufficient excuse the defendant fails to appear before the court as ordered, the court shall immediately:

- (a) Enter the defendant's failure to appear in the minutes;
- (b) Order forfeiture of the bail; and
- (c) Issue a bench warrant for the arrest of the defendant.

(2) The clerk shall provide the person posting bail written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the person posting bail or that person's designated agent.

(3) If the court quashes the bench warrant within one hundred eighty (180) days after the order of forfeiture, the forfeiture of bail shall be set aside and the court shall notify the person posting bail of the setting aside of the forfeiture within five (5) business days of the date of the order quashing the bench warrant and reinstating the bail.

19-2916. SETTING ASIDE ORDER OF FORFEITURE AND REINSTATING BAIL. If the defendant appears in court after the entry of the defendant's failure to appear and satisfactorily explains his failure to appear, the court may set aside the order of forfeiture and reinstate bail. Before reinstatement of bail, the court shall quash any bench warrant and set aside any order of forfeiture of the bail. The court shall provide written notice of reinstatement of bail to the person posting bail or to that person's designated agent within five (5) business days of the order reinstating bail.

19-2917. MOTION TO SET ASIDE FORFEITURE. Pursuant to a motion filed within one hundred eighty (180) days after an order of forfeiture as provided in section 19-2915, Idaho Code, the court that ordered forfeiture may direct that the order of forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, as provided by rules adopted by the supreme court, if it appears that justice so requires. If the court sets aside the order of forfeiture, then it may:

- (1) Reinstate the bail;
- (2) Exonerate the bail;
- (3) Recommit the defendant to the custody of the sheriff and set new bail; or
- (4) Release the defendant on his own recognizance.

19-2918. REMITTANCE OF FORFEITURE -- PAYMENT OF BAIL. (1) The person posting bail shall pay to the clerk of the court the amount of bail ordered within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture of bail unless:

- (a) The order of forfeiture has been set aside by the court;
- (b) The bail has been exonerated by the court; or
- (c) A motion to set aside the order of forfeiture or a motion to exonerate bail has been timely filed, together with a request for hearing, and has not been decided by the court. If the motion is decided and denied by the court more than one hundred eighty (180) days after the order of forfeiture, then the person posting bail shall pay the amount of bail to the clerk of the court within five (5) business days after the entry of the court's order denying the motion.

(2) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer. If the person posting a bail bond or property bond that has been forfeited does not pay the amount of bail within the time provided in this section, then the order of forfeiture shall become a judgment against the person posting the bail bond or property bond.

19-2919. REVOCATION OF BAIL -- VIOLATION OF CONDITIONS OF RELEASE. (1) Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for a bail revocation hearing, or the court may order the defendant to appear before the court at a time certain. At the bail revocation hearing, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may revoke the bail and remand the defendant to the custody of the sheriff. At any time thereafter, the court may reset bail in the same or a new amount and impose conditions of release. If the defendant fails to appear at the bail revocation hearing, the court shall issue a bench warrant for the defendant's arrest.

(2) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court may reset bail in the same or a new amount and impose any appropriate conditions of release.

(3) The court may deny readmittance to bail if the court finds that the defendant has intimidated or harassed a victim, potential witness, juror or judicial officer or has committed one (1) or more violations of the conditions of release and such violation or violations constituted a threat to the integrity of the judicial system.

19-2920. REVOCATION OF BAIL -- INSUFFICIENT SURETY. (1) Private surety. Upon the filing of a verified petition alleging that the bail posted by a cash deposit or property bond has become insufficient by reason of bankruptcy, death or any other reason, the court may order the defendant and the private surety to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the private surety is insufficient, the court may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(2) Surety insurance company. Upon the filing of a verified petition alleging bail posted by a surety insurance company has become insufficient by reason of bankruptcy, receivership, suspension or revocation of authority to conduct business in the state of Idaho or any other reason, the court may order the defendant and the commercial surety or its agent to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the commercial surety is insufficient, it may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(3) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court shall set bail in the same or a new amount and impose any appropriate conditions of release.

19-2921. ORDER OF RECOMMITMENT -- READMITTANCE TO BAIL. In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. If the offense is bailable, the court shall fix bail in a new amount and impose any appropriate conditions of release.

19-2922. EXONERATION OF BAIL. The court shall order the bail exonerated in the following circumstances:

(1) The defendant has appeared for all court proceedings as ordered and all charges for which the bail has been posted have been resolved by acquittal, dismissal or sentencing;

(2) Written notice of the court's order of forfeiture was not mailed to the person posting bail or his designated agent within five (5) business days of the order of forfeiture;

(3) Written notice of the court's order to set aside the order of forfeiture and reinstating bail was not mailed to the person posting bail or his designated agent within five (5) business days of the order;

(4) Before any order of forfeiture, the defendant has been surrendered or has surrendered himself to the sheriff of the county where the action is pending and the certificate of surrender has been filed with the court as required in section 19-2913, Idaho Code;

(5) The defendant has appeared before the court within one hundred eighty (180) days of the court's order of forfeiture, unless the court has set aside the order of forfeiture and has reinstated bail pursuant to section 19-2916, Idaho Code; provided, that in those cases where the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment by the person posting bail of any costs incurred by state or local authorities arising from the transport of the defendant to the jail facility of the county where the charges are pending. Such costs shall not exceed the amount of the bail posted;

(6) The court has revoked bail and has ordered that the defendant be recommitted.

19-2923. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Approved April 1, 2009.

CHAPTER 91
(H.B. No. 10)

AN ACT

RELATING TO SALES AND USE TAX ON AIRPLANES; AMENDING SECTION 63-3621, IDAHO CODE, TO EXEMPT FROM SALES AND USE TAX CERTAIN PERSONALLY OWNED AIRCRAFT ACQUIRED OUT OF STATE AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 63-3622GG, IDAHO CODE, TO LIMIT THE SALES AND USE TAX EXEMPTION FOR AIRCRAFT USED TO PROVIDE PASSENGER OR FREIGHT SERVICES FOR HIRE SUBJECT TO SPECIFIED QUALIFICATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of

the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned ~~motor~~ vehicles or personally owned aircraft by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-36220, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

SECTION 2. That Section 63-3622GG, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622GG. AIRCRAFT. There is exempted from the taxes imposed by this chapter:

(1) ~~The sale, lease, purchase, or use of aircraft primarily used to transport passengers or freight for hire. This exemption includes repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of such aircraft, but does not include tools and equipment utilized in performing such remodeling, repair or maintenance.~~ provide passenger or freight services for hire as a common carrier only if:

(a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and

(b) The aircraft is used to provide services indiscriminately to the public; and

(c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.

(2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.

~~(3)~~ (23) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

(4) Repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of aircraft described under subsections (1) and (2) of this section are exempt. Tools and equipment utilized in performing such remodeling, repair or maintenance are not exempt.

Approved April 2, 2009.

CHAPTER 92

(H.B. No. 152, As Amended in the Senate)

AN ACT

RELATING TO RURAL ECONOMIC DEVELOPMENT; AMENDING SECTION 49-2904, IDAHO CODE, TO REVISE MATCHING GRANT PROVISIONS RELATING TO PLANNING AND DEVELOPMENT OF INTERMODAL COMMERCE AUTHORITIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-2904, Idaho Code, be, and the same is hereby amended to read as follows:

49-2904. RURAL ECONOMIC DEVELOPMENT AND INTEGRATED FREIGHT TRANSPORTATION REVOLVING LOAN FUND. (1) The rural economic development and integrated freight transportation revolving loan fund is hereby created in the state treasury. The department of agriculture is authorized to administer the rural economic development and integrated freight transportation revolving loan fund. Moneys in the fund shall be used only for the purposes specified in this chapter. Surplus moneys in the fund shall be invested by the state treasurer in the same manner as provided under section

67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the rural economic development and integrated freight transportation revolving loan fund.

(2) Moneys in the fund are subject to appropriation and may consist of appropriations, grants, repayment of loans and other revenues from any other sources.

(3) Moneys in the fund may be used for loans or grants for qualified rural projects for the development and preservation of intermodal rail and truck services and facilities upon terms and conditions to be determined by the department of agriculture with the assistance and advice of the interagency working group as appropriate, for the purpose of:

(a) Rehabilitating, or improving rail lines to preserve essential local rail service;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Construction of loading or reloading facilities or other capital improvements including building or improving local transportation infrastructure, to increase business and commerce, and to improve shipping service; or

(d) Coordinating intermodal truck and rail traffic for integrated rural freight transportation.

(4) For the purposes of this chapter, "qualified lines" means class III short lines, branch lines of class I railroads leased or operated by a class III railroad, branch lines of class II railroads, and lines owned by public entities including port districts and intermodal commerce authorities. Definitions of class I, II and III railroads shall be as defined by the federal railroad administration.

(5) Moneys received by the department of agriculture from loan payments or other revenues shall be redeposited in the rural economic development and integrated freight transportation fund. Repayment of loans made under this chapter shall occur within a period as set by the department, but no repayment which exceeds fifteen (15) years shall be allowed. The repayment schedule and rate of interest shall be determined before the moneys are distributed.

(6) Moneys distributed under the provisions of this chapter shall be provided as loans to qualified lines or shippers.

(7) As interest funds allow, authorize ~~one (1)~~ matching grants per year not to exceed one hundred thousand dollars (\$100,000) per grant for planning and development of intermodal commerce authorities as provided in chapter 22, title 70, Idaho Code, upon conditions established in subsection (3) of this section.

Approved April 2, 2009.

CHAPTER 93

(H.B. No. 32, As Amended)

AN ACT

RELATING TO THE STATE ATHLETIC COMMISSION; AMENDING SECTION 54-402, IDAHO CODE, TO REVISE DEFINITIONS, TO DEFINE A TERM, TO REMOVE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-405, IDAHO CODE, TO REVISE THE COMMISSION'S POWER RELATING TO THE REVOCATION OF SANCTIONING PERMITS FOR CERTAIN CONTESTS AND EXHIBITIONS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-406, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE COMMISSION'S DUTIES AND POWER, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL COR-

RECTIONS; AMENDING SECTION 54-407, IDAHO CODE, TO REVISE REQUIREMENTS FOR ELIGIBILITY TO COMPETE IN BOXING CONTESTS OR EXHIBITIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-408, IDAHO CODE, TO REVISE PROVISIONS RELATING TO BONDS, OTHER TYPES OF FINANCIAL SECURITY AND MEDICAL INSURANCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-410, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ISSUING LICENSES OR SANCTIONING PERMITS; AMENDING SECTION 54-411, IDAHO CODE, TO REMOVE A PROVISION RELATING TO PARTICIPANT CHANGES FOR CERTAIN EXHIBITIONS, TO REVISE PROVISIONS RELATING TO THE TAX ON GROSS RECEIPTS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-414, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO BOXING ROUNDS AND BOUTS; AMENDING SECTION 54-415, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PHYSICIANS ATTENDANCE AND EXAMINATIONS OF COMBATANTS AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTIONS 54-416, 54-417, 54-418, 54-420, 54-421 AND 54-422, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-402, Idaho Code, be, and the same is hereby amended to read as follows:

54-402. DEFINITIONS. (1) The terms used in this chapter have the following meanings:

(a) "Amateur combatant" means an individual who has never been a professional ~~boxer, kickboxer, martial artist or professional wrestler~~ combatant, as defined in this chapter, as well as an individual who has never received nor competed for any purse or other article of value, either for participating in any contest or exhibition of unarmed combat or for the expenses of training therefor, other than a noncash prize which does not exceed fifty dollars (\$50.00) in value.

(b) "Applicant" means any individual, club, association, corporation, partnership, trust or other business entity which submits an application to the commission for a license or permit pursuant to this chapter.

(c) "Booking agent" means persons who act as bookers, agents, agencies and representatives who secure engagements and contracts for ~~boxers~~ combatants.

(d) "Boxing" means the pugilistic act of attack and defense with the fists, practiced as a sport. The term includes all variations of the sport permitting or using other parts of the human body to deliver blows upon an opponent including, but not limited to, the foot, knee, leg, elbow or head. "Boxing" includes, but is not limited to, kickboxing and martial arts but does not include professional wrestling.

(e) "Broadcast" means any audio or visual transmission sent by any means of signal within, into, or from this state, whether live or taped or time delayed, and includes any replays thereof.

(f) "Bureau" means the Idaho bureau of occupational licenses.

(g) "Closed-circuit telecast" means any telecast of ~~professional boxing contests, professional boxing exhibitions or professional wrestling~~ exhibitions which is not intended to be available for viewing without the payment of a fee, collected or based upon each telecast viewed, or for the privilege of viewing the telecast.

(h) "Club" means an incorporated or unincorporated association or body of individuals voluntarily united and acting together for some common or special purpose.

(i) "College" and/or "university" means:

- (i) An educational institution of higher learning that typically grants associate's, bachelor's, master's or doctorate degrees;
- (ii) A division or school of a university; and

(iii) As used in this chapter, also includes educational institutions known as junior colleges, community colleges and professional-technical schools.

(j) "Combatant" means an individual who takes part as a competitor in a contest or exhibition.

(k) "Commission" means the state athletic commission.

~~(*)~~ "Commissioner" means the state athletic commissioner.

~~(l)~~ "Contest" means a match in which the participants strive earnestly in good faith to win.

~~(m) "Contestant" means an individual who takes part as a competitor in a boxing contest, boxing exhibition or wrestling exhibition.~~

(n) "Corner person" means, but shall not be limited to, a trainer, a second, or any other individual who attends the ~~contestant~~ combatant during a match.

(o) "Exhibition" means an engagement in which the participants show or display their skill without necessarily striving to win, such as a wrestling match between professional wrestlers or ~~boxing match~~ a contest where ~~contestants~~ combatants are sparring.

(p) "Judge" means an individual other than a referee who shall have a vote in determining the winner of any contest.

(q) "Kickboxing" means any form of competitive pugilistic contest or exhibition in which blows are delivered with the hand and any part of the foot.

(r) "License" means a certificate issued by the commission to participants of sanctioned professional contests and exhibitions or amateur contests and exhibitions which are not exempt from regulation under section 54-406(3), Idaho Code, which is required for participation in such events.

(s) "Licensee" means a person who has been issued a license by the commission.

(t) "Manager" means a person who controls or administers the affairs of any professional ~~contestant~~ combatant. The term "manager" includes a person acting as a booking agent or a person acting as the representative of a manager.

(u) "Martial arts" means any form of karate, kung fu, tae kwon do, sumo, judo or any other system or form of combat or self-defense art.

(v) "Matchmaker" means a person who brings together or induces ~~contestants~~ combatants regulated by the commission to participate in contests or exhibitions regulated by the commission or a person who arranges contests or exhibitions regulated by the commission.

(w) "Participant" means any person who is required by this chapter to be licensed by the commission in connection with taking part in or being associated with a contest or exhibition regulated by the commission.

(x) "Person" means any individual, partnership, limited liability company, club, association, corporation, organization, secondary school, college, university, trust or other legal entity.

(y) "Physician" means an individual licensed under the laws of this state to engage in the general practice of medicine or osteopathic medicine.

(z) "Professional ~~boxer~~ combatant" means an individual eighteen (18) years of age or older who participates as a ~~contestant~~ competitor in a ~~boxing event~~ contest or exhibition for money, prizes, or purses, or who teaches, instructs, or assists in the practice of ~~boxing~~ unarmed combat or sparring as a means of obtaining pecuniary gain.

(aa) "Professional contest and professional exhibition" means any ~~boxing match~~ contest or ~~wrestling~~ exhibition conducted within this state involving professional ~~boxing or wrestling~~ contestants combatants.

~~(bb) "Professional wrestler" means an individual eighteen (18) years of age or older who participates as a contestant in a wrestling exhibition~~

~~for money, prizes, or purses, or who teaches, instructs, or assists in wrestling exhibitions as a means of obtaining pecuniary gain.~~

~~(ee)~~ "Professional wrestling" means an activity, ~~other than boxing,~~ in which ~~contestants~~ combatants struggle hand-to-hand primarily for the purpose of providing entertainment to spectators and which does not comprise a bona fide athletic contest or competition.

~~(edcc)~~ "Promoter" means any person including an owner, officer, partner, member, director, employee or shareholder thereof, who produces, arranges or stages any ~~professional wrestling exhibition, any professional~~ contest or exhibition, ~~or any amateur contest or exhibition~~ which ~~that~~ is not exempt from regulation pursuant to section 54-406(3), Idaho Code.

(eedd) "Pugilistic" means an act related to the skill or practice of fighting with the fists.

~~(fee)~~ "Purse" means the financial guarantee or any other remuneration or thing of value for which a person participates in a ~~professional boxing~~ contest, ~~professional boxing exhibition~~ or ~~professional wrestling~~ exhibition.

~~(geff)~~ "Ring official" means any individual who performs an official function during the progress of a regulated contest or exhibition including, but not limited to, timekeepers, judges, referees and attending physicians.

~~(hgg)~~ "Sanctioning permit" means a license issued by the commission to a promoter which authorizes the holding of contests and exhibitions, ~~kickboxing contests and exhibitions, martial arts contests and exhibitions or professional wrestling contests and exhibitions.~~

(~~ihh~~) "Secondary school" ~~shall~~ means a school which, for operational purposes, is organized and administered on the basis of grades seven (7) through twelve (12), inclusive, or any combination thereof.

~~(jjii)~~ "Sparring" means to engage in a form of ~~boxing with jabbing or feinting movements, and the exchange of few heavy blows~~ unarmed combat, such as occurs in a practice or exhibition match.

~~(kjj)~~ "Trainer" means an individual who assists, coaches or instructs any unarmed combatant with respect to physical conditioning, strategy, techniques or preparation for competition in contests or exhibitions which are not exempt from regulation pursuant to section 54-406(3), Idaho Code.

~~(lkk)~~ "Unarmed combat" means a fight or contest between individuals or groups without the use of weapons other than the natural appurtenances of the human body.

(2) To the extent the commission deems pertinent, any specialized term not otherwise defined in this chapter may be defined by rule.

SECTION 2. That Section 54-405, Idaho Code, be, and the same is hereby amended to read as follows:

54-405. ~~SANCTIONING PERMIT FOR BOXING, KICKBOXING, MARTIAL ARTS AND WRESTLING EVENTS~~ AMATEUR AND PROFESSIONAL CONTESTS AND EXHIBITIONS -- TELECASTS. The commission shall have power to issue and for cause to immediately revoke any sanctioning permit to conduct boxing amateur and professional contests and exhibitions, ~~kickboxing contests and exhibitions, martial arts contests and exhibitions, or wrestling contests and exhibitions,~~ including a simultaneous telecast of any live, current or spontaneous contests and exhibitions on a closed-circuit telecast within this state, whether originating in this state or elsewhere, and for which a charge is made, as herein provided under such terms and conditions and at such times and places as the commission may determine. Such permit shall entitle the holder thereof to conduct contests and exhibitions under such terms and conditions and at such times and places as the commission may determine. In case the commission

shall refuse to grant a permit to any applicant, or shall cancel any permit, such applicant, or the holder of such canceled permit shall be entitled, upon application, to a hearing to be held not less than sixty (60) days after the filing of such order at such place as the commission may designate; provided however, that it has been found by a valid finding and such finding is fully set forth in the order, that the applicant or permittee has been guilty of any felony or of disobeying any provision of this chapter, such hearing shall be denied.

SECTION 3. That Section 54-406, Idaho Code, be, and the same is hereby amended to read as follows:

54-406. DUTIES OF COMMISSION -- SANCTIONING PERMITS -- LICENSING -- EXEMPTIONS -- MEDICAL CERTIFICATION. (1) The commission shall have power, and it shall be its duty, to direct, supervise and control all boxing amateur and professional contests and exhibitions, ~~kickboxing contests and exhibitions, martial arts contests and exhibitions, and wrestling contests and exhibitions~~ conducted within the state and no such contest or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission has authority to adopt rules to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission including, but not limited to:

- (a) Development of an ethical code of conduct for commissioners, commission staff and commission officials;
- (b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches;
- (c) Requirements regarding a participant's apparel, bandages, hand-wraps, gloves, mouthpiece and appearance during a match;
- (d) Requirements relating to a manager's participation, presence, and conduct during a match;
- (e) Duties and responsibilities of all licensees under this chapter;
- (f) Procedures for hearings and resolution of disputes;
- (g) Qualifications for appointment of referees and judges;
- (h) Designation and duties of a knockdown timekeeper;
- (i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission; and
- (j) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur ~~boxing and kickboxing matches~~ contests and exhibitions held in this state including, but not limited to, the health and safety standards the organizations use before, during and after the matches to ensure the health, safety and well-being of the amateurs combatants participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety and well-being of the amateurs combatants participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of United States amateur boxing, inc., as the minimum health and safety standards for an amateur boxing sanctioning organization, and the health and safety standards of the international amateur kickboxing sport association as the minimum health and safety standards for an amateur kickboxing sanctioning organization.

(2) The commission may, in its discretion, issue or refuse to issue and for cause immediately revoke sanctioning permits to conduct, hold or give amateur and professional contests or exhibitions whether or not an admission

fee is charged by any person, organization, association or fraternal society. The commission may also, in its discretion, issue or refuse to issue and for cause immediately revoke or suspend or otherwise sanction licenses for participants of sanctioned contests and exhibitions.

(3) Specifically exempt from the provisions of this chapter are all contests or exhibitions ~~which~~ that:

(a) Are contests or exhibitions conducted by any secondary school, college or university, whether public or private, where all the participating contestants are bona fide students enrolled in any secondary school, college or university, within or without this state; or

(b) Are entirely contests or exhibitions, in which all ~~contestants~~ combatants are amateurs, and which have been sanctioned as amateur athletic ~~events~~ contests or exhibitions by any of the following associations:

(i) United States amateur boxing, inc., also known as USA boxing, inc.;

(ii) Amateur athletic union of United States, inc., also known as the national amateur athletic union, the amateur athletic union and the AAU;

(iii) Any other entity that the commission approves as an officially recognized amateur boxing or other amateur athletic sanctioning authority, which shall be subject to annual review for purposes of renewal; or

(c) Are contests or exhibitions held under the auspices or sanction of an established nonprofit secondary school activities organization or of its public or nonprofit accredited secondary school members, or held under the auspices or sanction of an established college or university activities organization or its public or not-for-profit accredited college or university members;

(d) Are contests or exhibitions conducted by any military installation or branch of the United States armed forces, or the state national guard, where the participants are employed by the military installation, are members of the branch of the armed forces, or the state national guard unit conducting the contest or exhibition.

(4) Provided, further, that every ~~contestant~~ combatant in any contest or exhibition exempt under the provisions of this chapter, prior to engaging in and conducting such contest or exhibition, shall be examined by a licensed physician at least once in each calendar year, or where such contest is conducted by a secondary school, college or university or organization as further described in this section, once in each academic year in which instance the physician shall also designate the maximum and minimum weights at which the ~~contestant~~ combatant shall be medically certified to participate. Provided further, that no ~~contestant~~ combatant shall be permitted to participate in any such contest or exhibition in any weight classification other than that or those for which he is certificated. Provided further, that the exempted organizations shall be governed by the provisions of section 54-414, Idaho Code, as that section applies to contests or exhibitions conducted by persons exempted in this section from the general provisions of this chapter. No contest or exhibition shall be conducted within this state except pursuant to a license issued in accordance with the provisions of this chapter and the rules of the commission except as hereinabove provided.

SECTION 4. That Section 54-407, Idaho Code, be, and the same is hereby amended to read as follows:

54-407. TIME BETWEEN BOXING CONTESTS. (1) In no case may a boxing ~~contestant~~ combatant participate in more than one (1) boxing contest or exhibition in any twenty-four (24) hour period.

(2) Without the special permission of the commission, a boxing ~~con-~~
~~testant~~ combatant may not compete in a boxing contest or exhibition in this state unless:

(a) Four (4) days have elapsed since his last contest if the contest lasted for no more than four (4) rounds.

(b) Seven (7) days have elapsed since his last contest if the contest lasted five (5) or six (6) rounds.

(c) Fourteen (14) days have elapsed since his last contest if the contest lasted ~~nine seven~~ (97) or ~~ten eight~~ (108) rounds.

(d) Twenty-one (21) days have elapsed since his last contest if the contest lasted nine (9) or ten (10) rounds.

(e) Forty-five (45) days have elapsed since his last contest if the contest lasted eleven (11) or twelve (12) rounds.

~~(f) Sixty (60) days have elapsed since his last contest if the contest lasted thirteen (13) or more rounds.~~

SECTION 5. That Section 54-408, Idaho Code, be, and the same is hereby amended to read as follows:

54-408. PROMOTERS -- BOND OR OTHER SECURITY -- MEDICAL INSURANCE. (1) Before any sanctioning permit is issued to any promoter to conduct or hold a contest or exhibition which is not exempt from regulation pursuant to section 54-406(3), Idaho Code, the applicant shall file with the commission a bond or other form of financial security payable to the state of Idaho in an amount determined by the commission, executed by the applicant and a surety company or companies authorized to do business in this state, and conditioned upon the faithful performance by the promoter, which shall include, but not be limited to, the cancellation of a contest or exhibition without good cause as determined by the commission once the event has been approved by the commission.

(2) The bond or other form of financial security required under this section shall guarantee the payment of all taxes, fees, fines and other moneys due and payable pursuant to the provisions of this chapter and the rules of the commission including, but not limited to, the payment of purses to the participants, other than the promoter, any contributions for required insurance, pensions, disability and medical examinations, the repayment to ticketholders of purchased tickets, and if applicable, the payment of fees to ring officials and physicians and, in the event of the cancellation of a contest or exhibition approved by the commission without good cause, an amount determined by the commission.

(3) After issuance of a sanctioning permit to a promoter, the commission may modify the amount of bond or other form of financial security required to ensure adequate and sufficient coverage for payment of taxes, fees, fines, purses, and other moneys due and payable pursuant to the provisions of this section. Failure of any promoter to secure a modified bond or other form of financial security required pursuant to this subsection within such period of time as the commission may prescribe, shall be grounds for revocation of the sanctioning permit of such promoter.

(4) All ~~bond~~ proceeds collected pursuant to the provisions of this section shall be deposited in the state treasury to the credit of the occupational licenses fund.

(5) ~~Boxing and wrestling p~~ Promoters must obtain health insurance to cover any injuries incurred by participants, other than the promoter, at the time of the event.

SECTION 6. That Section 54-410, Idaho Code, be, and the same is hereby amended to read as follows:

54-410. ISSUANCE OF A LICENSE OR SANCTIONING PERMIT. Upon the approval by the commission of any application for a license or sanctioning permit, as hereinabove provided, and the filing of the bond or other form of financial security the commission shall forthwith issue such license or sanctioning permit.

SECTION 7. That Section 54-411, Idaho Code, be, and the same is hereby amended to read as follows:

54-411. STATEMENT AND REPORT OF EVENT -- TAX ON GROSS RECEIPTS. (1) Any promoter as herein provided shall, within seven (7) days prior to the holding of any contest or exhibition, file with the commission a statement setting forth the name of each ~~contestant~~ professional combatant, his manager or managers and such other information as the commission may require. ~~Participant changes within a twenty four (24) hour period regarding a wrestling exhibition may be allowed after notice to the commission, if the new participant holds a valid license under this chapter.~~ Within seventy-two (72) hours after the termination of any contest or exhibition the promoter shall file with the commission representative a gross receipts report, duly verified as the commission may require showing the number of tickets sold for such contest or exhibition, the price charged for such tickets and the gross receipts thereof, and such other and further information as the commission may require. The promoter shall pay to the commission at the time of filing the above report a tax equal to five percent (5%) of the gross receipts for deposit by the commission.

(2) The number of complimentary tickets shall be limited to two percent (2%) of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation.

(3) Gross receipts reports signed under oath shall also include:

(a) The name of the promoter;

(b) The ~~boxing~~ contest, ~~boxing~~ ~~exhibition~~ or ~~wrestling~~ exhibition sanctioning permit number;

(c) The promoter's business address and any license or sanctioning permit number required of such promoter by law;

(d) Gross receipts as specified by this section, during the period specified by this section; and

(e) Such further information as the commission may require to enable it to compute correctly and collect the assessment levied pursuant to this section.

(4) In addition to the information required on gross receipts reports, the commission may request, and the promoter shall furnish, any information deemed necessary for a correct computation of the assessment levied pursuant to this section.

(5) All levies pursuant to this section shall be collected by the commission and shall be deposited in the state treasury to the credit of the occupational licenses fund.

(6) The moneys collected from the assessment levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the commission.

(7) The promoter shall compute and pay to the commission the required assessment due. If the payment of the assessment is not postmarked or delivered to the commission as specified in subsection (1) of this section, the assessment shall be delinquent from such date.

(8) Of the moneys collected by the commission pursuant to the tax authorized in subsection (1) of this section, up to five percent (5%) of said tax may be used by the commission for the promotion and support of amateur ~~boxing~~ contests and exhibitions in this state. All parties interested in receiving a distribution must submit an application to the commission which shall include the name of the person or entity applying and a detailed description of

what the applicant intends to do with the distribution if granted. The commission shall consider all applications and assign distributions, if any, at the end of each fiscal year to those applicants the commission deems most qualified.

(9) It shall be the duty of every promoter required to make a gross receipts report and pay any assessment pursuant to the provisions of this section to keep and preserve suitable records and documents which may be necessary to determine the amount of assessment due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the commission or by its authorized agents.

SECTION 8. That Section 54-414, Idaho Code, be, and the same is hereby amended to read as follows:

54-414. BOXING ROUNDS AND BOUTS LIMITED. ~~—WEIGHT OF GLOVES.~~ No boxing contest or boxing exhibition held in this state whether under the provisions of this chapter or otherwise shall be for more than ten (10) rounds. Each round in a contest or exhibition shall be scheduled to last for the same length of time. No one (1) round of any boxing contest or exhibition shall be scheduled for longer than three (3) minutes and there shall be not less than one (1) minute intermission between each round. In the event of bouts involving a state or regional championship, the commission may grant an extension of no more than two (2) additional rounds to allow total bouts of twelve (12) rounds, ~~and in bouts involving a national or world championship the commission may grant an extension of no more than five (5) additional rounds to allow total bouts of fifteen (15) rounds.~~ No participant in any boxing contest or boxing exhibition shall be permitted to wear gloves weighing less than eight (8) ounces each; provided, however, that no participants weighing more than one hundred forty seven (147) pounds shall be permitted to wear gloves weighing less than ten (10) ounces each. The commission shall promulgate rules to assure clean and sportsmanlike conduct on the part of all participants and officials, and the proper and orderly conduct of the contest or exhibition in all respects, including, but not limited to, the weight of the gloves required for contests and exhibitions, and to otherwise make rules consistent with this chapter, but such rules shall apply only to contests or exhibitions held under the provisions of this chapter.

SECTION 9. That Section 54-415, Idaho Code, be, and the same is hereby amended to read as follows:

54-415. PHYSICIAN'S ATTENDANCE -- EXAMINATION OF CONTESTANTS COMBATANTS. (1) Each ~~contestant combatant~~ contestant combatant for a ~~boxing~~ contest or ~~boxing~~ exhibition shall be examined within ~~eight thirty-six (836)~~ eighty-six (86) hours prior to the contest or exhibition by a physician appointed by the commission. The physician shall forthwith and before such contest or exhibition report in writing and over his signature the physical condition of each and every ~~contestant combatant~~ contestant combatant to the commissioner or agent present at such contest. Blank forms of physicians' reports shall be provided by the commission and all questions upon such blanks shall be answered in full. At the discretion of the commission and immediately prior to a contest or exhibition, the commission may require a ~~contestant combatant~~ contestant combatant to be examined by a physician appointed by the commission. No ~~contestant combatant~~ contestant combatant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest or exhibition. The promoter conducting such contest or exhibition shall pay the examining physician a fee in the amount designated by the commission. No ~~boxing~~ contest, ~~boxing~~ exhibition or ~~wrestling~~ exhibition shall be held unless a physician ~~appointed by the commission~~ is present through-

out the contest or exhibition. The promoter shall pay the fees, in the amount designated by the commission, of the physician who is required to be present at a contest or exhibition.

~~(2) The commission may select any practicing physician as the examining or attending physician.~~ The physician present at the contest or exhibition shall have the authority to stop any contest or exhibition when in the physician's opinion it would be dangerous for a ~~contestant~~ combatant to continue.

SECTION 10. That Section 54-416, Idaho Code, be, and the same is hereby amended to read as follows:

54-416. ANNUAL LICENSES -- FEES -- REVOCATION. (1) The commission shall grant annual licenses in compliance with the rules prescribed by the commission, and the payment of the fees, the amount of which is to be determined by the commission upon application, prescribed to promoters, managers, booking agents, matchmakers, ring officials, ~~boxers, wrestlers,~~ combatants and corner persons; provided, that the provisions of this section shall not apply to ~~contestants~~ combatants or other persons who may participate in contests or exhibitions which are exempted from the provisions of this chapter pursuant to section 54-406(3), Idaho Code.

(2) Any such license may be revoked by the commission for any cause which it shall deem sufficient.

(3) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(4) The ring officials for any contest shall be designated by the commission from among the active pool of licensed or appointed ring officials.

(5) The ring officials for any exhibition shall be provided by the promoter and licensed by the commission.

SECTION 11. That Section 54-417, Idaho Code, be, and the same is hereby amended to read as follows:

54-417. PARTICIPATION IN PURSE -- ~~CONDUCTING SHAM BOXING EVENTS~~ CONTESTS OR EXHIBITIONS -- FORFEITURE OF LICENSE. Any person promoting ~~boxing~~ exhibitions or contests who shall directly or indirectly participate in the purse or fee of any manager of any ~~boxers or any boxer~~ combatant and any licensee who shall conduct or participate in any sham or fake ~~boxing~~ contest or exhibition shall thereby forfeit any licenses issued pursuant to this chapter and the commission shall declare the license canceled and void and the licensee shall not thereafter be entitled to receive another such license, or any license issued pursuant to the provisions of this chapter.

SECTION 12. That Section 54-418, Idaho Code, be, and the same is hereby amended to read as follows:

54-418. VIOLATION OF RULES -- ~~SHAM BOXING EVENTS~~ CONTESTS OR EXHIBITIONS -- PENALTIES. Any participant ~~or licensee~~ who shall participate in any sham or fake ~~boxing~~ contest or exhibition and any ~~licensee or~~ participant who violates any rule of the commission shall be penalized in the following manner. For the first offense he shall be restrained by order of the commission for a period of not less than three (3) months from participating in any ~~event~~ contest or exhibition held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense, for any second offense such participant or licensee shall be forever suspended from participation in any ~~event~~ contest or exhibition under the provisions of this chapter.

SECTION 13. That Section 54-420, Idaho Code, be, and the same is hereby amended to read as follows:

54-420. PROHIBITIONS -- PENALTIES -- INJUNCTIONS. (1) Any person conducting or participating in ~~boxing contests or exhibitions, kickboxing contests or exhibitions, martial arts contests or exhibitions or wrestling contests or exhibitions~~ within this state without first having obtained a license or sanctioning permit in the manner provided in this chapter is in violation of the provisions of this chapter, excepting such contests excluded from the operation of the provisions of this chapter in section 54-406(3), Idaho Code.

(2) It is unlawful for any promoter or person associated with or employed by any promoter to destroy any ticket or ticket stub, whether sold or unsold, within three (3) months after the date of any contest or exhibition.

(3) The striking of any individual who is not a licensed ~~contestant combatant~~ in that particular ~~boxing contest, boxing exhibition or wrestling exhibition~~ shall constitute grounds for suspension, revocation or both of a license issued pursuant to the provisions of this chapter.

(4) Any person violating any of the provisions of this chapter or the rules of the commission for which no penalty is otherwise herein provided, upon conviction, shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000) or by incarceration in the county jail for not more than thirty (30) days or by both such fine and incarceration. The commission shall suspend or revoke the license of any person convicted of violating the provisions of this chapter and the rules of the commission.

(5) In addition to other penalties provided by law if, after a hearing in accordance with the provisions of this chapter and the rules of the commission, the commission shall find any person to be in violation of any of the provisions of this chapter, such person may be subject to an administrative penalty equal to the greater of five hundred dollars (\$500) or one percent (1%) of gross receipts received for each violation. Each day a person is in violation of the provisions of this chapter and the rules of the commission may constitute a separate violation. All administrative penalties collected pursuant to the provisions of this subsection shall be deposited in the state treasury to the occupational licenses fund. Upon the request of the commission or its agent, the attorney general may institute action to enforce the administrative penalties imposed pursuant to this subsection in the district court for Ada county.

(6) Upon the request of the commission or its agent, the county prosecutor in the county where a violation has occurred or is about to occur may make application to the district court in the county for an order enjoining the acts or practices prohibited by the provisions of this chapter and the rules of the commission, and upon a showing that the person has engaged or is about to engage in any of the prohibited acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.

SECTION 14. That Section 54-421, Idaho Code, be, and the same is hereby amended to read as follows:

54-421. EMERGENCY MEDICAL EQUIPMENT AND PERSONNEL. A promoter shall have an ambulance or paramedical unit with appropriate resuscitation equipment continuously present at the event site during the performance of all ~~boxing contests, boxing exhibitions and wrestling exhibitions~~ in case a serious injury occurs.

SECTION 15. That Section 54-422, Idaho Code, be, and the same is hereby amended to read as follows:

54-422. SECURITY -- PROMOTER'S RESPONSIBILITY. A promoter shall ensure that adequate security personnel are present at a ~~boxing contest, box-~~

~~ing exhibition or wrestling~~ exhibition to control the crowd or audience in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the event site or other facility and the commission.

Approved April 3, 2009.

CHAPTER 94
(H.B. No. 38)

AN ACT

RELATING TO PODIATRISTS; AMENDING SECTION 54-607, IDAHO CODE, TO INCREASE THE MAXIMUM ANNUAL RENEWAL LICENSE FEE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-607, Idaho Code, be, and the same is hereby amended to read as follows:

54-607. LICENSES -- ISSUANCE -- RENEWALS -- DISPLAY. If the applicant shall pass a satisfactory examination, and shall show that he is a person of good moral character and he possesses the qualifications required by this chapter to entitle him to a license as a podiatrist, he shall be entitled to a license authorizing him to practice podiatry within the state of Idaho. Said successful applicant shall be issued his license by the board upon payment of the original license fee which shall be the same fee as required for renewal.

All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. An annual renewal license fee established by board rule shall not exceed ~~four~~ six hundred fifty dollars (\$~~40~~650) for podiatrists. Payment of fees herein provided, and satisfactory evidence of having complied with continued education requirements as established by board rules are a condition precedent for issuance of a license.

Every person to whom a license is granted shall have such license displayed continuously in a conspicuous part of his office wherein his practice of podiatry is conducted.

The board shall keep on file a register of all applicants for license, rejected applicants, and licensees.

The fee for reinstatement of a license shall be as provided in section 67-2614, Idaho Code. All fees shall be paid to the bureau of occupational licenses.

Approved April 3, 2009.

CHAPTER 95
(H.B. No. 44)

AN ACT

RELATING TO THE PRACTICE OF PHYSICAL THERAPY; AMENDING SECTION 54-2205, IDAHO CODE, TO REVISE THE COMPENSATION OF BOARD MEMBERS; AND AMENDING SECTION 54-2212, IDAHO CODE, TO REVISE PROVISIONS RELATING TO LICENSING REQUIREMENTS FOR FOREIGN-EDUCATED PHYSICAL THERAPISTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2205, Idaho Code, be, and the same is hereby amended to read as follows:

54-2205. PHYSICAL THERAPY LICENSURE BOARD. (1) There is hereby established in the department of self-governing agencies a physical therapy licensure board. The board shall consist of five (5) members appointed by the governor, three (3) of whom shall be licensed physical therapists, one (1) of whom may be a licensed physical therapist assistant or a licensed physical therapist, and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of health services. All members of the board shall be residents of Idaho at the time of their appointment and for their term of service. The persons appointed to the board who are required to be licensed under this chapter shall have been engaged in rendering physical therapy or physical therapy assistant care services, respectively, to the public, in teaching, or in research in physical therapy or physical therapy assistant care services, respectively, for at least three (3) years immediately preceding their appointments. These members, excepting the public member, shall at all times be holders of valid licenses and be in good standing without restriction upon such license for the practice of physical therapy or physical therapy assistant, respectively, in Idaho.

(2) The governor, within sixty (60) days after the effective date of this act, shall appoint two (2) board members for a term of one (1) year; two (2) members for a term of two (2) years; and one (1) member for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed in this section.

(3) The members of the board shall be selected by the governor after considering a list of three (3) qualified applicants for each such vacancy submitted by the Idaho physical therapy association.

(4) The board, within sixty (60) days after the effective date of this act, and annually thereafter, shall hold a meeting and elect a chairman who shall preside at meetings of the board. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum. Other meetings may be convened at the call of the chairman or upon the written request of any two (2) board members.

(5) Each member of the board shall be compensated as provided in section 59-509 (~~kn~~), Idaho Code.

(6) Members of the board shall disqualify themselves and, upon the motion of any interested party may, upon proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias that interferes with their fair and impartial service.

(7) The governor may remove any member of the board from the membership of the board who is guilty of malfeasance, misfeasance or nonfeasance.

SECTION 2. That Section 54-2212, Idaho Code, be, and the same is hereby amended to read as follows:

54-2212. QUALIFICATIONS FOR LICENSURE OF FOREIGN-EDUCATED PHYSICAL THERAPISTS. (1) An applicant for licensure as a physical therapist or physical therapist assistant who has been educated outside of the United States shall:

(a) Be of good moral character; and

(b) Submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a

school for physical therapists or physical therapist assistants with a curriculum acceptable to the board; and

(c) Have his or her education credentials evaluated by a board approved credential evaluation agency and provide satisfactory evidence that his or her education is substantially equivalent to the requirements of physical therapists or physical therapist assistants educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require successful completion of additional coursework before proceeding with the application process;

(d) Provide written proof that the school of physical therapy education is recognized by its own ministry of education and that such education would qualify the person for a license to practice physical therapy without limitation in that country;

(e) If the applicant has actually practiced as a physical therapist or physical therapist assistant abroad, the applicant shall provide written proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;

(f) Provide proof of legal authorization to reside and seek employment in the United States or its territories;

(g) Have successfully passed an examination authorized by the board.

(2) Notwithstanding the provisions of this section, if the foreign-educated physical therapist or physical therapist assistant applicant is a graduate of a professional physical therapy education program accredited by an agency approved by the board, requirements in subsections (1) (c) and (1) (d) of this section shall be waived.

Approved April 3, 2009.

CHAPTER 96
(H.B. No. 72)

AN ACT

RELATING TO DISPOSITION OF FINES, FORFEITURES, AND COSTS; REPEALING SECTION 19-4701, IDAHO CODE, RELATING TO FINES, FORFEITURES, AND COSTS, DISPOSITION, AND SATISFACTION OF JUDGMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-4701, Idaho Code, be, and the same is hereby repealed.

Approved April 3, 2009.

CHAPTER 97
(H.B. No. 169)

AN ACT

RELATING TO THE RESIDENTIAL MORTGAGE PRACTICES ACT; REPEALING CHAPTER 31, TITLE 26, IDAHO CODE; AMENDING TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 26, IDAHO CODE, TO PROVIDE A SHORT TITLE AND SCOPE, TO PROVIDE GENERAL DEFINITIONS, TO PROVIDE THE DIRECTOR'S AUTHORITY UNDER THE NMLSR, TO PROVIDE THAT A BORROWER'S REMEDIES ARE NOT AFFECTED, TO PROVIDE THE RELATIONSHIP TO OTHER LAWS, TO PROVIDE FOR FUNDS COLLECTED, TO PROVIDE CHARGES FOR PARTICIPATION IN THE NMLSR, TO PROVIDE

REPORTING REQUIREMENTS TO THE NMLSR, TO PROVIDE A MORTGAGE RECOVERY FUND, TO PROVIDE FUNDING FOR THE MORTGAGE RECOVERY FUND, TO PROVIDE A STATUTE OF LIMITATIONS, TO PROVIDE A PROCEDURE FOR RECOVERY FROM THE MORTGAGE RECOVERY FUND, TO PROVIDE RECOVERY LIMITS FROM THE MORTGAGE RECOVERY FUND, TO PROVIDE FOR THE REVOCATION OF A LICENSE FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND, TO PROVIDE DEFINITIONS FOR PART 2, TO PROVIDE EXEMPTIONS TO PART 2, TO PROVIDE FOR UNLAWFUL ACTS RELATING TO MORTGAGE BROKERING OR MORTGAGE LENDING ACTIVITIES, TO PROVIDE THE POWERS AND DUTIES OF THE DIRECTOR, TO PROVIDE REMEDIES AVAILABLE TO THE DEPARTMENT, TO PROVIDE FOR THE LICENSE TO DO BUSINESS AS A MORTGAGE BROKER OR MORTGAGE LENDER, TO PROVIDE FOR THE REVOCATION OR SUSPENSION OF A MORTGAGE BROKER OR MORTGAGE LENDER LICENSE, TO PROVIDE REQUIREMENTS RELATING TO RECORDS, ANNUAL REPORTS AND RENEWAL OF A MORTGAGE BROKER OR MORTGAGE LENDER LICENSE, TO PROVIDE FOR EXAMINATION AND INVESTIGATIONS, TO PROVIDE FOR RESTRICTIONS ON FEES AND CHARGES, TO PROVIDE THE PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE LENDERS, TO PROVIDE REQUIREMENTS RELATING TO THE CONTINUING EDUCATION OF QUALIFIED PERSONS IN CHARGE, TO PROVIDE A TITLE, TO PROVIDE FOR THE PURPOSE OF PART 3, TO PROVIDE DEFINITIONS FOR PART 3, TO PROVIDE REQUIREMENTS RELATING TO THE LICENSE AND REGISTRATION OF MORTGAGE LOAN ORIGINATORS AND FOR EXEMPTIONS, TO PROVIDE FOR THE LICENSE AND REGISTRATION APPLICATION OF MORTGAGE LOAN ORIGINATORS, TO PROVIDE REQUIREMENTS RELATING TO THE ISSUANCE OF A MORTGAGE LOAN ORIGINATOR LICENSE, TO PROVIDE PRELICENSING AND RELICENSING EDUCATION REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS, TO PROVIDE FOR TESTING OF MORTGAGE LOAN ORIGINATORS, TO PROVIDE LICENSE RENEWAL REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS, TO PROVIDE CONTINUING EDUCATION REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS, TO PROVIDE THE DIRECTOR WITH THE AUTHORITY TO REQUIRE MORTGAGE LOAN ORIGINATORS TO BE LICENSED AND REGISTERED THROUGH THE NMLSR, TO PROVIDE A NMLSR INFORMATION CHALLENGE PROCESS, TO PROVIDE FOR ENFORCEMENT AUTHORITY, VIOLATIONS AND PENALTIES, TO PROVIDE THE REMEDIES AVAILABLE TO THE DEPARTMENT, TO PROVIDE FOR THE CONFIDENTIALITY OF CERTAIN INFORMATION, TO PROVIDE THE DIRECTOR WITH INVESTIGATION AND EXAMINATION AUTHORITY, TO PROVIDE FOR PROHIBITED ACTS AND PRACTICES OF MORTGAGE LOAN ORIGINATORS, TO PROVIDE FOR THE UNLAWFUL ACTS OF MORTGAGE LOAN ORIGINATORS, TO PROVIDE REQUIREMENTS FOR NONFEDERALLY INSURED CREDIT UNIONS AND TO PROVIDE DISCLOSURE REQUIREMENTS RELATING TO UNIQUE IDENTIFIERS AND PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 31, Title 26, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 31, Title 26, Idaho Code, and to read as follows:

CHAPTER 31
IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

PART 1.
GENERAL PROVISIONS

26-31-101. SHORT TITLE AND SCOPE. This chapter shall be known and may be cited as the "Idaho Residential Mortgage Practices Act," and is organized into three (3) parts. Part 1 includes provisions that apply to the entire chapter. Part 2 includes provisions for the regulation of mortgage brokers and mortgage lenders. Part 3 includes provisions for the regulation of individual mortgage loan originators.

26-31-102. GENERAL DEFINITIONS. As used in this chapter and in rules promulgated pursuant to this chapter:

(1) "Borrower" means the person who has applied for a residential mortgage loan from a licensee, or person required to be licensed, under this chapter, or on whose behalf the activities set forth in section 26-31-201(3), (5) or (7), or section 26-31-303(6), Idaho Code, are conducted.

(2) "Department" means the department of finance of the state of Idaho.

(3) "Director" means the director of the department of finance.

(4) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this chapter.

(5) "Nationwide mortgage licensing system and registry" or "NMLSR" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage brokers, mortgage lenders and mortgage loan originators.

(6) "Person" means a natural person, corporation, company, limited liability company, partnership or association;

(7) "Real estate settlement procedures act" means the act set forth in 12 U.S.C. section 2601 et seq., as identified by administrative rule.

(8) "Regulation X" means regulation X as promulgated by the U.S. department of housing and urban development and codified in 24 CFR part 3500 et seq., as identified by administrative rule.

(9) "Regulation Z" means regulation Z as promulgated by the board of governors of the federal reserve system and codified in 12 CFR part 226 et seq., as identified by administrative rule.

(10) "Residential mortgage loan" means any loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, located in Idaho, or on residential real estate.

(11) "Residential real estate" means any real property located in Idaho, upon which is constructed or intended to be constructed a dwelling as defined in section 103(v) of the truth in lending act.

(12) "Truth in lending act" means the act set forth in 15 U.S.C. section 1601 et seq., as identified by administrative rule.

(13) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

26-31-103. DIRECTOR'S AUTHORITY UNDER THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. (1) The legislature has determined that a nationwide mortgage licensing system and registry for mortgage brokers, mortgage lenders and mortgage loan originators is consistent with both the public interest and the purposes of this chapter.

(2) For the sole purpose of participating in the nationwide mortgage licensing system and registry, the director is authorized to:

(a) Modify by rule the license renewal dates under this chapter;

(b) Establish by rule such new requirements as are necessary for the state of Idaho to participate in the nationwide mortgage licensing system and registry upon the director's finding that each new requirement is consistent with both the public interest and the purposes of this chapter; and

(c) Require a background investigation of each applicant for a mortgage broker, mortgage lender or mortgage loan originator license by means of fingerprint checks by the Idaho state police and the FBI for state and national criminal history record checks. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this chapter. The fee required to perform the criminal history record check shall be borne by the license applicant. Information obtained or held by the director pursuant to this

subsection shall be considered confidential personal information and shall be exempt from disclosure pursuant to section 9-340C(8) and (9), Idaho Code.

26-31-104. BORROWER'S REMEDIES NOT AFFECTED. The grant of powers to the director in this chapter does not limit remedies available to borrowers under this chapter or under other principles of law or equity.

26-31-105. RELATIONSHIP TO OTHER LAWS. (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions, regulations and rules pertaining to the financial or lending activities of persons who:

(a) Are subject to the jurisdiction of the department, including those whose activities are subject to this chapter;

(b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or

(c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (a) or (b) of this subsection or who assist or facilitate such transactions.

(2) The requirements of this section shall apply to all ordinances, resolutions and rules pertaining to financial or lending activities, including any ordinances, resolutions or rules disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

(3) In the event that the United States department of housing and urban development pursuant to the authority granted to it under section 1508, P.L. 110-289, determines that a provision of this chapter does not meet the requirements of section 1508, P.L. 110-289, the director may, in his discretion, for the sole purpose of complying with the determination, refrain from enforcing the provision found by the department of housing and urban development to not meet the requirements of section 1508, P.L. 110-289, until the adjournment of the session of the legislature next following the determination by the department of housing and urban development.

26-31-106. FUNDS COLLECTED UNDER THIS CHAPTER. Except as provided in section 26-31-110 of this chapter pertaining to the mortgage recovery fund, the director shall deposit all funds collected by the department under this chapter into the finance administrative account pursuant to section 67-2702, Idaho Code.

26-31-107. CHARGES FOR PARTICIPATION IN THE NMLSR. Mortgage brokers, mortgage lenders and mortgage loan originators who seek to obtain or retain a license under this chapter shall pay the charges imposed and retained by the NMLSR to fund the expenses associated with an applicant's or licensee's participation in the NMLSR.

26-31-108. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. The director shall regularly report to the NMLSR violations of this chapter, as well as enforcement actions and other relevant information, subject to the provisions of section 26-31-315, Idaho Code.

26-31-109. MORTGAGE RECOVERY FUND. (1) There is hereby created in the state treasury the mortgage recovery fund.

(2) As provided in section 26-31-112, Idaho Code, the mortgage recovery fund shall be used to reimburse persons to whom an Idaho court awards actual damages resulting from acts constituting violations of this chapter by a mortgage broker, mortgage lender or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(3) A recovery from the mortgage recovery fund shall not include punitive damages awarded by a court.

(4) Payments from the mortgage recovery fund may not be made to:

(a) Any lender whose acts, or the acts of its agent, were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(b) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(c) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

26-31-110. FUNDING. (1) Upon application for a mortgage broker, mortgage lender or mortgage loan originator license, and upon renewal of such licenses issued under this chapter, the applicant or person seeking renewal shall, in addition to paying the license application or renewal fee required under this chapter, pay a fee to the department through the NMLSR for deposit in the mortgage recovery fund as follows:

(a) Two hundred fifty dollars (\$250) for home office locations of mortgage brokers and mortgage lenders licensed under part 2 of this chapter;

(b) One hundred fifty dollars (\$150) for each branch office location of a mortgage broker or mortgage lender licensed under part 2 of this chapter; and

(c) One hundred dollars (\$100) for each mortgage loan originator licensed under part 3 of this chapter.

(2) With respect to mortgage recovery fund fees payable at the time of annual license renewal for licensees under this chapter, the director may adjust the fees within the limits of subsection (1) of this section on a pro rata basis as necessary to maintain a balance of one million five hundred thousand dollars (\$1,500,000) in the mortgage recovery fund, plus an additional amount of fifty thousand dollars (\$50,000) as set forth in subsection (4) of this section.

(3) All interest that accrues in the mortgage recovery fund shall be added to the balance of the mortgage recovery fund.

(4) On an annual basis, the department may apply up to fifty thousand dollars (\$50,000) of moneys accumulated in the mortgage recovery fund in excess of one million five hundred thousand dollars (\$1,500,000) to:

(a) Fund the department's expenses in administering the mortgage recovery fund;

(b) Develop and implement consumer education concerning the residential mortgage industry;

(c) Contract for research projects for the state concerning the residential mortgage industry;

(d) Fund the training expenses of department staff members and its attorneys concerning the residential mortgage industry; and

(e) Publish and distribute educational materials to licensees and applicants for licensure under this chapter.

26-31-111. STATUTE OF LIMITATIONS. The filing of a verified claim with the court pursuant to section 26-31-112, Idaho Code, that is the basis of a claim against the mortgage recovery fund may not be instituted more than one

(1) year after termination of all court proceedings concerning such judgment, including appeals.

26-31-112. PROCEDURE FOR RECOVERY. (1) A person who obtains against a mortgage broker, mortgage lender or mortgage loan originator a money judgment in an Idaho court that includes findings of violations of this chapter occurring on or after July 1, 2009, after final judgment has been entered, execution returned unsatisfied and the judgment has been recorded, may file a verified claim with the court in which the judgment was entered, and on twenty (20) days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment, subject to section 26-31-111, Idaho Code.

(2) At a hearing on the application, the person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under section 26-31-109(2), Idaho Code;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker, mortgage lender or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this state or any other state to satisfy the judgment.

(3) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund shall be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(4) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (2) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all of the requirements of this section.

(5) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(6) If the court finds that the aggregate amount of claims against a mortgage broker, mortgage lender or mortgage loan originator exceeds the limits set forth in section 26-31-113, Idaho Code, the court shall reduce proportionately the amount the court finds payable on the claim.

(7) The department shall provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

26-31-113. RECOVERY LIMITS. (1) A person entitled to receive payment from the mortgage recovery fund may receive reimbursement of actual damages, which shall not include post judgment interest, reasonable attorney's fees and court costs as determined by the court, subject to the limitations in subsection (2) of this section and subject to the availability of sufficient funds in the mortgage recovery fund at the time payment is ordered.

(2) A payment from the mortgage recovery fund may be made by the director only pursuant to a court order as provided by section 26-31-112, Idaho Code, in an amount equal to the unsatisfied portion of the creditor's judgment or judgments or fifty thousand dollars (\$50,000), whichever is less.

(3) Payments from the mortgage recovery fund shall be limited in the aggregate to two hundred fifty thousand dollars (\$250,000) against any one (1) licensee. If the total claims against such licensee exceed the aggregate limit of two hundred fifty thousand dollars (\$250,000), the court shall prorate payment based on the ratio that a person's claim bears to the other claims filed against such licensee.

26-31-114. REVOCATION OF LICENSE FOR PAYMENT FROM MORTGAGE RECOVERY FUND. (1) The director may summarily revoke a license issued under this chapter if the director is required by court order under section 26-31-112, Idaho Code, to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(2) A person whose license has been revoked under subsection (1) of this section is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(3) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

PART 2.

PROVISIONS APPLICABLE TO MORTGAGE BROKERS AND MORTGAGE LENDERS

26-31-201. DEFINITIONS. As used in this part and in rules promulgated pursuant to this chapter and pertinent to this part:

(1) "Agent" means a person who acts with the consent and on behalf of a licensee and is subject to the licensee's direct or indirect control, and may include an independent contractor.

(2) "Loan modification" means an adjustment or compromise of an existing residential mortgage loan. The term "loan modification" does not include a refinancing transaction.

(3) "Loan modification activities" means for compensation or gain, or in the expectation of compensation or gain, engaging in or offering to engage in effecting loan modifications in this state. The definition of "debt counselor" or "credit counselor" in section 26-2222(9), Idaho Code, shall not apply to loan modification activities.

(4) "Mortgage broker" means any nonexempt organization that performs the activities described in subsection 5 of this section, with respect to a residential mortgage loan.

(5) "Mortgage brokering activities" means for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans or engaging in loan modification activities on behalf of a borrower.

(6) "Mortgage lender" means any nonexempt organization that makes residential mortgage loans to borrowers and performs the activities described in subsection (7) of this section.

(7) "Mortgage lending activities" means for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept applications for residential mortgage loans, assisting or offering to assist in the preparation of an application for a residential mortgage loan.

(8) "Organization" means a person that is not a natural person.

(9) "Qualified person in charge" means the person designated, pursuant to section 26-31-206, Idaho Code, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under this part.

26-31-202. EXEMPTIONS. The provisions of this part do not apply to:

(1) Agencies of the United States and agencies of this state and its political subdivisions;

(2) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(3) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs;

(4) Regulated lenders licensed under the Idaho credit code and regularly engaged in making regulated consumer loans other than those secured by a security interest in real property;

(5) Trust companies as defined in section 26-3203, Idaho Code;

(6) Any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union or industrial loan company. The terms "bank," "savings and loan association," "credit union" and "industrial loan company" shall include employees and agents of such organizations as well as wholly owned subsidiaries of such organizations, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;

(7) Attorneys, or persons licensed under chapter 2, title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status;

(8) Persons employed by, or who contract with, a licensee under this part to perform only clerical or administrative functions on behalf of such licensee, and who do not solicit borrowers or negotiate the terms of loans on behalf of the licensee;

(9) Any person not making more than five (5) loans primarily for personal, family or household use and primarily secured by a security interest on residential real property, with his own funds for his own investment, in any period of twelve (12) consecutive months; nor

(10) Any person who funds a residential mortgage loan which has been originated and processed by a licensee under this part or by an exempt person under this part, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee under this part or an exempt person under this part.

26-31-203. UNLAWFUL ACTS. (1) Any person, except a person exempt under section 26-31-202, Idaho Code, who engages in mortgage brokering activities or mortgage lending activities without first obtaining a license from the department in accordance with this part, shall upon conviction be guilty of a felony.

(2) No person, except a person exempt under section 26-31-202, Idaho Code, shall engage in mortgage brokering activities or mortgage lending activities without first obtaining a license from the department in accordance with this part.

26-31-204. POWERS AND DUTIES OF DIRECTOR. In addition to any other duties imposed upon the director by law, the director shall:

- (1) Administer and enforce the provisions and requirements of this part;
- (2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this part or rules promulgated pursuant to this chapter and pertinent to this part;
- (3) Conduct examinations of the books and records of mortgage broker and mortgage lender licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this part and the rules promulgated pursuant to this chapter and pertinent to this part;
- (4) Appoint a volunteer advisory board which shall consist of two (2) individuals who represent mortgage lenders and two (2) individuals who represent mortgage brokers;
- (5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this part;
- (6) Be authorized to set, by annual written notification to mortgage broker and mortgage lender licensees, limits on the fees and charges which are set forth in subsections (1) and (2) of section 26-31-210, Idaho Code; and
- (7) Review and approve forms used by mortgage broker and mortgage lender licensees prior to their use as prescribed by the director.

26-31-205. REMEDIES AVAILABLE TO THE DEPARTMENT. (1) Whenever it appears to the director that any person subject to this part has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z or of this part or any rule promulgated or order issued under this act and pertinent to this part, he may in his discretion bring an action in any court of competent jurisdiction, and upon a showing of any violation, there shall be granted any or all of the following:

- (a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part or any rule promulgated or order issued under this chapter and pertinent to this part, and to enforce compliance with this part or any rule promulgated or order issued under this chapter and pertinent to this part;
 - (b) An order that the person violating any provision of this part, or a rule promulgated or order issued under this chapter and pertinent to this part pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation;
 - (c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees;
 - (d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this part;
 - (e) An order granting other appropriate remedies including restitution to borrowers for excess charges or actual damages.
- (2) If the director finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated or order issued under this chapter and pertinent to this part, the director may, in his discretion, order the person to cease and desist from the violations.

26-31-206. LICENSE TO DO BUSINESS AS A MORTGAGE BROKER OR MORTGAGE LENDER. (1) The director shall receive and act on all applications for licenses to do business as a mortgage broker or mortgage lender. Applications shall be filed through the NMLSR, or as otherwise prescribed by the director, shall contain such information as the director may reasonably require, shall

be updated through the NMLSR, or as otherwise prescribed by the director, as necessary to keep the information current, and shall be accompanied by a nonrefundable application fee of three hundred fifty dollars (\$350).

(2) An application for license may be denied if the director finds that:

(a) The financial responsibility, character and fitness of the license applicant, or of the officers and directors thereof, if the applicant is a corporation, partners thereof if the applicant is a partnership, members or managers thereof if the applicant is a limited liability company and individuals designated in charge of the applicant's places of business, are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this part;

(b) The qualified person in charge of the applicant's places of business does not have a minimum of three (3) years' experience in residential mortgage brokering or mortgage lending;

(c) The applicant has been convicted of any felony, or of a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the applicant of any felony, or of a misdemeanor involving any aspect of the financial services business;

(d) The applicant has had a license, substantially equivalent to a license under this part and issued by any state, denied, revoked or suspended under the law of such state;

(e) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

(f) The applicant or any partner, officer, director, manager, member, employee or agent of the applicant has violated this chapter or any rule promulgated or order issued under this chapter and pertinent to this part;

(g) The applicant or any partner, officer, director, manager, member, employee or agent of the applicant has violated any state or federal law, rule or regulation pertaining to the financial services industry; or

(h) The applicant has not provided information on the application as reasonably required by the director pursuant to subsection (1) of this section, or has provided materially false information.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request to the director, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application.

(5) Every licensee under this part shall maintain a home office licensed under this part as the licensee's principal location for the transaction of mortgage business. The director may, on application through the NMLSR, or as otherwise prescribed by the director, issue additional branch licenses to the same licensee upon compliance with all the provisions of this part governing the issuance of a single license. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage lending activities are directly or indirectly conducted. The individual in charge of each place of business shall satisfy the require-

ments of subsections (2) (b), (c) and (d) of this section. Each license under this part shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of section 26-31-208(3), Idaho Code, or the license is relinquished, suspended or revoked; provided however, branch licenses shall terminate upon the relinquishment or revocation of a home office license.

(6) No licensee under this part shall change the location of any place of business, consolidate two (2) or more locations or close any home office location without giving the director at least fifteen (15) days' prior written notice. A licensee under this part shall give written notice to the director within three (3) business days of the closure of any branch location licensed under this part. Written notice of the closure of a home or branch office location shall include a detailed explanation of the disposition of all loan applications pending at the time of closure of the licensed location.

(7) No licensee under this part shall engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license.

(8) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which could disqualify that applicant if convicted.

(9) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any civil action or administrative proceeding against an applicant in which the civil action or administrative proceeding involves any aspect of a financial service business and the outcome of which could disqualify the applicant.

(10) A license applicant under this part shall make complete disclosure of all information required in the license application, including information concerning officers, directors, partners, members, managers, employees or agents. A license applicant, or person acting on behalf of the applicant, is not liable in any civil action other than a civil action brought by a governmental agency, related to an alleged untrue statement made pursuant to this part, unless it is shown by clear and convincing evidence that:

(a) The license applicant, or person acting on behalf of the license applicant, knew at the time that the statement was made that it was false in any material respect; or

(b) The license applicant, or person acting on behalf of the applicant, acted in reckless disregard as to the statement's truth or falsity.

(11) Each mortgage broker or mortgage lender licensed under this part shall display in plain view the certificate of licensure issued by the department in its principal office and in each branch office.

(12) Notwithstanding any other provision of this part, an individual licensed under part 3 of this chapter may apply for a license under this section.

26-31-207. REVOCATION OR SUSPENSION OF LICENSE. (1) If the department has reason to believe that grounds exist for revocation or suspension of a license issued pursuant to this part, the department may initiate a contested case against a mortgage broker or mortgage lender, and any partner, officer, director, manager, member, employee or agent whose activities constitute the basis for revocation or suspension, in accordance with chapter 52, title 67, Idaho Code. The director may, after proceedings pursuant to chapter 52, title 67, Idaho Code, suspend the license for a period not to exceed six (6) months, or revoke the license, if he finds that:

(a) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has violated this chapter or any rule

promulgated or order issued under this chapter and pertinent to this part; or

(b) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending, or mortgage loan origination activities; or

(c) Facts or conditions exist which would clearly have justified the director in refusing to grant a license had these facts or conditions been known to exist at the time the license was issued; or

(d) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has been convicted of any felony, or of a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the licensee or partner, officer, director, manager, member, employee or agent of the licensee, of any felony, or of a misdemeanor involving any aspect of the financial services business; or

(e) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has had a license substantially equivalent to a license under this act, and issued by another state, denied, revoked or suspended under the laws of such state; or

(f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(g) The mortgage broker or mortgage lender licensee has failed to notify the director of the employment or termination of, or the entering into or termination of a contractual relationship with, a licensed mortgage loan originator pursuant to section 26-31-208(2), Idaho Code; or

(h) The mortgage broker or mortgage lender licensee has failed to supervise diligently and control the mortgage-related activities of a mortgage loan originator as defined in part 3 of this chapter and that is employed by the licensee.

(2) If the director finds that good cause exists for revocation of a license issued under this part, and that enforcement of this chapter and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(3) Any mortgage broker or mortgage lender licensee may relinquish its license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect its liability for acts previously committed, and may not occur after the filing of a complaint for revocation of the license.

(4) The director may, in his discretion, reinstate a license issued under this part, terminate a suspension or grant a new license under this part to a person whose license issued under this part has been revoked or suspended, if no fact or condition then exists which clearly would justify the department in refusing to grant a license.

26-31-208. RECORDS - ANNUAL REPORTS - RENEWAL OF LICENSE. (1) Every licensee under this part shall maintain records, including financial records in conformity with generally accepted accounting principles, in a manner that will enable the director to determine whether the licensee is complying with the provisions of this part. The recordkeeping system of the licensee shall be sufficient if it makes the required information reasonably available to the director. The records need not be kept in the place of business where residential mortgage loans are made, if the director is given

free access to the records wherever located. The records pertaining to any loan need not be preserved for more than three (3) years after making the final entry relating to the loan.

(2) Every mortgage broker or mortgage lender licensed under this part that employs or contracts with a mortgage loan originator licensed under part 3 of this chapter, for the purpose of conducting mortgage loan origination activities in Idaho, shall:

(a) Notify the director through the NMLSR, or as otherwise prescribed by the director, of the employment of, or contractual relationship with, a mortgage loan originator licensee within thirty (30) days of such employment or contract;

(b) Notify the director through the NMLSR, or as otherwise prescribed by the director, of the termination of employment of, or contractual relationship with, a mortgage loan originator licensee within thirty (30) days of such termination; and

(c) Maintain any records relating to the employment of, or contractual relationship with, a mortgage loan originator licensee, for a period not to exceed three (3) years.

(3) On or before December 31 of each year, every mortgage broker and mortgage lender licensee under this part shall pay through the NMLSR, or as otherwise prescribed by the director, an annual license renewal fee of one hundred fifty dollars (\$150), and file with the director through the NMLSR, or as otherwise prescribed by the director, a renewal form containing such information as the director may require.

(4) On or before March 31 of each year, or other date established by the director by rule, every mortgage broker and mortgage lender licensee under this part shall file with the director a composite annual report containing such information as the director may require for the residential mortgage loans made or brokered by it for the preceding calendar year.

(5) Each mortgage broker and mortgage lender licensee under this part shall, as required by the NMLSR, submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require.

26-31-209. EXAMINATION AND INVESTIGATIONS. (1) The director shall examine periodically at intervals he deems appropriate, the loans and business records of each licensee under this part. In addition, for the purpose of discovering violations of the provisions of this part or securing information lawfully required pursuant to this part, the director may at any time investigate the loans, business, books and records of any such licensee. For these purposes, the director shall have free and reasonable access to the offices, places of business and books and records of the licensee. The director, for purposes of examination of licensees under this part, shall be paid the actual cost of examination by such licensee within thirty (30) days of the completion of the examination.

(2) If the records of a licensee under this part are located outside of this state, the licensee shall have the option to make such records available to the director at a convenient location within this state, or pay the reasonable and necessary expenses for the director or his representative to examine such records at the place where they are maintained. The director may designate representatives, including comparable officials of the state in which the records are located, to inspect such records on his behalf.

(3) For the purposes of this section, the director may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and

location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the district court for an order compelling compliance.

26-31-210. RESTRICTIONS ON FEES AND CHARGES. (1) A person subject to this part shall not require a borrower or person seeking a loan modification to pay any fees or charges prior to a residential mortgage loan closing, or prior to the completion of a loan modification, except:

(a) Charges actually incurred by the person subject to this part on behalf of the borrower or person seeking a loan modification for services which have been rendered by third parties. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, UCC-4 lien searches and appraisals;

(b) An application fee;

(c) A rate-lock fee;

(d) A commitment fee upon approval of the residential mortgage loan;

(e) A cancellation fee which may be charged and collected by a person subject to this part at any time either prior to the scheduled closing of a residential mortgage loan transaction, completion of a loan modification or subsequent thereto.

(2) Any fees charged under the authority of this section must be reasonable and customary as to the type and the amount of the fee charged.

26-31-211. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE LENDERS. No mortgage broker or mortgage lender licensee under this part or person required under this part to have such license shall:

(1) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(2) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(3) Accept any fees at closing which were not previously disclosed fully to the borrower;

(4) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower;

(5) Engage in any misrepresentation or omission of a material fact in connection with a residential mortgage loan;

(6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property which is to be covered by a residential mortgage loan;

(7) Make any false promise likely to influence or persuade, or pursue a course of misrepresentations and false promises through mortgage loan originators or other agents, or through advertising or otherwise;

(8) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material terms of a residential mortgage loan transaction;

(9) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower as required by rule promulgated pursuant to this chapter and pertinent to this part;

(10) Engage in mortgage loan origination activity through any person who at the time of such mortgage loan origination activity does not hold a mortgage loan originator license issued by the department pursuant to this chapter; nor

(11) Receive a fee for engaging in loan modification activities except pursuant to a written agreement between the person subject to this part and a person seeking a loan modification. The written agreement must specify the amount of the fee that will be charged to the person seeking a loan modification, specify the terms of the loan for which modification will be sought and disclose the expected impact of the loan modification on the monthly payment and length of the loan.

26-31-212. CONTINUING EDUCATION OF QUALIFIED PERSONS IN CHARGE. The continuing education requirements set forth in section 26-31-310, Idaho Code, shall apply to each qualified person in charge designated by a mortgage broker or mortgage lender licensed under this part.

PART 3.

PROVISIONS APPLICABLE TO MORTGAGE LOAN ORIGINATORS

26-31-301. TITLE. This part 3 of the chapter may be cited as the "Idaho Secure and Fair Enforcement for Mortgage Licensing Act of 2009" or the "Idaho S.A.F.E. Mortgage Licensing Act of 2009."

26-31-302. PURPOSE OF THIS PART. (1) The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Idaho consumers, Idaho's economy, the neighborhoods and communities of Idaho, and the housing and real estate industry. The legislature finds that accessibility to mortgage credit is vital to the state's citizens. The legislature also finds that it is essential for the protection of the citizens of Idaho and the stability of Idaho's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage loan origination process. The purpose of this part is to protect consumers seeking mortgage loans and to ensure that the mortgage industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the legislature establishes within this part an effective system of supervision of mortgage loan originators and enforcement authority, including:

(a) The authority of the director to issue licenses to conduct business under this part, and the authority to promulgate rules and adopt procedures necessary to the licensing of persons covered under this part;

(b) The authority of the director to deny, suspend, condition or revoke licenses issued under this part;

(c) The authority of the director to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this part, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties, and order the removal and ban of individuals from office or employment.

(2) The director shall have broad administrative authority to administer, interpret and enforce this part, and to promulgate rules and issue orders implementing this part, to carry out the intention of the legislature under this part.

26-31-303. DEFINITIONS. For purposes of this part, the following definitions shall apply:

(1) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act, and includes any credit union.

(2) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation.

(3) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(4) "Individual" means a natural person.

(5) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under this chapter.

(a) For the purposes of this subsection clerical or support duties may include, subsequent to the receipt of an application:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(6) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.

(a) Mortgage loan originator does not mean the following:

(i) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 26-31-304(4), Idaho Code;

(ii) A person or entity that only performs real estate brokerage activity and is licensed or registered in accordance with Idaho law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator;

(iii) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. section 101(53D); and

(iv) A person that only performs the activities of a manufactured housing resale broker, responsible managing employee, retailer or salesman as defined in and licensed under chapter 21, title 44, Idaho Code, unless the person is compensated by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator. This subparagraph shall not apply if the United States department of housing and urban development finds, through guideline, rule, regulation or interpretive letter, that it is inconsistent with the requirements of P.L. 110-289, title V.

(b) For the purposes of this section, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

- (ii) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;
- (iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;
- (iv) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under law; and
- (v) Offering to engage in any activity, or act in any capacity, described in subparagraphs (i) through (iv) of this paragraph.

(7) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(8) "Registered mortgage loan originator" means any individual who is registered with, and maintains a unique identifier through the NMLSR, who meets the definition of mortgage loan originator and who is an employee of one (1) of the following:

- (a) A depository institution;
- (b) A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
- (c) An institution regulated by the farm credit administration.

26-31-304. LICENSE AND REGISTRATION REQUIRED - EXEMPTIONS. (1) Unless specifically exempt under subsection (3) of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this part. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the NMLSR.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective dates for subsection (1) of this section are as follows:

(a) For all individuals other than those described in subsection (2) (b) of this section, the effective date is July 31, 2010, or such later date approved by the secretary of the U.S. department of housing and urban development, pursuant to the authority granted under P.L. 110-289, section 1508 (a).

(b) For all individuals licensed as mortgage loan originators at the time of the enactment of this part, the effective date is January 1, 2011, or such later date approved by the secretary of the U.S. department of housing and urban development, pursuant to the authority granted under P.L. 110-289, section 1508 (a).

(3) The following are exempt from this part:

(a) Registered mortgage loan originators when acting on behalf of an entity described in section 26-31-303(8) (a) through (c), Idaho Code;

(b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(c) Any individual who offers or negotiates terms of a residential mortgage loan that is secured by a dwelling that serves as the individual's residence; and

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

(4) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless

such independent contractor loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(5) For the purpose of implementing an orderly and efficient application and licensing process the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director may establish expedited review and licensing procedures.

26-31-305. LICENSE AND REGISTRATION APPLICATION. (1) Applicants for a license under this part shall apply through the NMLSR in a form prescribed by the director. Each form shall include such content as the director may reasonably require, shall be updated as necessary to keep the information current and shall be accompanied by a nonrefundable application fee of two hundred dollars (\$200).

(2) In order to fulfill the purposes of this part, the director may establish relationships or enter into contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and to process fees.

(3) Applicants for licensure under this part shall submit the following to the NMLSR:

(a) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the NMLSR, including the authorization for the NMLSR and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the fair credit reporting act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(4) For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection (3) (a) and (b) (ii) of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(5) For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of subsection (3) (b) (i) and (ii) of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(6) Upon written request, an applicant for a license under this part is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied and the request for a hearing is made not more than fifteen (15) days after the director mailed the written notification of denial; or

(b) The director has not issued the applicant a license within sixty (60) days after the application for the license was filed.

If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. The director shall state, in substance, his findings that support a denial of an application.

(7) The director may suspend action upon an application for a license pursuant to this part pending the resolution of any criminal charge before a court of competent jurisdiction against the applicant which could disqualify the applicant from licensure if the applicant is found guilty of or pleads guilty to the pending charge.

(8) The director may suspend action upon an application for a license pursuant to this part pending resolution of any civil action or administrative proceeding against an applicant that involves any aspect of a financial service business, the outcome of which could disqualify the applicant from licensure.

(9) A license applicant under this part shall make complete disclosure of all information required in the license application. A license applicant or person acting on behalf of the applicant is not liable in any civil action other than a civil action brought by a governmental agency related to an alleged untrue statement made pursuant to this section, unless it is shown that:

(a) The license applicant, or person acting on behalf of the license applicant, knew at the time that the statement was made that it was materially false; or

(b) The license applicant or person acting on behalf of the license applicant acted in reckless disregard as to the truth or falsity of the statement.

26-31-306. ISSUANCE OF LICENSE. (1) The director shall not issue a mortgage loan originator license under this part unless the director first makes the following findings:

(a) The applicant has never had a mortgage loan originator license, or other mortgage related license, revoked in any governmental jurisdiction. If such revocation was formally vacated, then it shall not be deemed a revocation for purposes of this section.

(b) The applicant has not been convicted of, found guilty of or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court:

(i) During the seven (7) year period immediately preceding the date of the application for licensing or registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

Any pardon of a conviction shall not be deemed a conviction for purposes of this section.

(c) The applicant has demonstrated financial responsibility, character and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this part. The director shall not base a license application denial under this part solely on a license applicant's credit score or credit report. For purposes of this section, a license applicant is not financially responsible if he has shown a disregard for the management of his personal financial affairs. A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following:

(i) A current outstanding judgment, except a judgment issued solely as a result of medical expenses;

(ii) A current outstanding tax lien or other government lien or filing;

(iii) A foreclosure within the past three (3) years; or

(iv) A pattern of delinquent accounts within the past three (3) years.

(d) The applicant has successfully completed the prelicensing education requirement pursuant to section 26-31-307, Idaho Code.

(e) The applicant has passed a written test that meets the test requirement pursuant to section 26-31-308, Idaho Code.

(f) The applicant has met the mortgage recovery fund requirement pursuant to section 26-31-110, Idaho Code.

(g) The applicant has provided information on the application as required in section 26-31-305, Idaho Code.

(2) The director may conduct investigations as he deems necessary to determine the existence of the requirements listed in this section.

26-31-307. PRELICENSING AND RELICENSING EDUCATION OF MORTGAGE LOAN ORIGINATORS. (1) All individuals seeking a mortgage loan originator license under this part shall satisfy the prelicensing education requirement by completing at least twenty (20) hours of course instruction that has been approved by the NMLSR and administered by a provider approved by the NMLSR. Course instruction shall include:

(a) Three (3) hours minimum of instruction on federal law and regulation;

(b) Three (3) hours minimum of instruction on ethics, which shall include fraud, consumer protection and fair lending issues;

(c) Two (2) hours minimum of instruction on lending standards for the nontraditional mortgage product marketplace; and

(d) Two (2) hours minimum of instruction directly related to this chapter and rules promulgated pursuant to this chapter.

(2) Nothing in this section shall preclude any prelicensing education course approved by the NMLSR that is provided by the applicant's employer, an entity affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(3) The prelicensing education may be completed in a classroom, online or by any other means approved by the NMLSR.

(4) The prelicensing education requirements approved by the NMLSR in subsection (1) (a) through (c) of this section for any state shall be accepted as credit toward completion of prelicensing education requirements in Idaho.

(5) An individual licensed prior to the effective date of this part who is applying to be relicensed shall submit proof that he has completed all of the continuing education requirements for the year in which the license was last held.

26-31-308. TESTING OF MORTGAGE LOAN ORIGINATORS. (1) All individuals seeking a mortgage loan originator license under this part shall satisfy the written test requirement by passing a qualified written test developed by the NMLSR and administered by a provider approved by the NMLSR based upon reasonable standards and subject to subsection (2) of this section.

(2) A written test shall not be deemed a qualified written test for purposes of subsection (1) of this section unless it tests the applicant's knowledge and comprehension in the following subject areas:

(a) Ethics;

(b) Federal and state law and regulation pertaining to mortgage loan origination;

(c) Federal and state law and regulation pertaining to fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the NMLSR from administering a written test at the applicant's place of employment, at the location of any subsidiary or affiliate of the applicant's employer or at the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4) In order to pass a qualified written test, an individual must achieve a test score of not less than seventy-five percent (75%) correct answers to questions.

(5) An individual may retake a qualified written test three (3) times with each test occurring at least thirty (30) days after the preceding test. If an individual does not achieve a passing score on a qualified written test upon retake number three (3), then the individual shall wait at least six (6) months before retaking a written test.

(6) A mortgage loan originator who fails to maintain a valid license under this part for a period of five (5) years or longer shall, as a condition of obtaining a new license under this part, retake and pass a qualified written test, not taking into account any time during which such individual is a registered mortgage loan originator.

26-31-309. LICENSE RENEWAL REQUIREMENTS. (1) The minimum standards for license renewal for mortgage loan originators licensed under this part shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance pursuant to section 26-31-306, Idaho Code;

(b) The mortgage loan originator has satisfied the annual continuing education requirements pursuant to section 26-31-310, Idaho Code; and

(c) The mortgage loan originator has filed with the director through the NMLSR, on or before December 31 of each year, a renewal form containing such information as the director may require, accompanied by a non-refundable annual license renewal fee of one hundred dollars (\$100).

(2) If a mortgage loan originator fails to timely satisfy the provisions of subsection (1) of this section, then his license shall be deemed expired. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

26-31-310. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS. (1) In order to meet the annual continuing education requirements, a licensed mortgage loan originator shall complete at least eight (8) hours of education each year, which shall include:

(a) Three (3) hours minimum of instruction on federal law and regulation;

(b) Two (2) hours minimum of instruction on ethics, including instruction on fraud, consumer protection and fair lending issues;

(c) Two (2) hours minimum of instruction on lending standards for the nontraditional mortgage product marketplace; and

(d) One (1) hour minimum of instruction directly related to this chapter and rules promulgated pursuant to this chapter.

(2) All continuing education courses and course providers shall be reviewed and approved by the NMLSR based upon reasonable standards.

(3) Nothing in this section shall preclude any approved education course that is provided by the mortgage loan originator's employer or an entity which is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.

(4) Continuing education courses may be completed either in a classroom, online or by any other means approved by the NMLSR.

(5) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, except as provided in section 26-31-309(2), Idaho Code, and subsection (9) of this section, and may not take the same approved course in the same or successive years in order to meet the annual continuing education requirements.

(6) A licensed mortgage loan originator who is an approved instructor may receive credit toward his required annual continuing education hours at the rate of two (2) hours of credit for every one (1) hour of instruction of an approved continuing education course.

(7) An individual having successfully completed the continuing education requirements described in subsection (1) (a) through (c) of this section for any state shall be awarded credit toward completion of continuing education requirements in Idaho.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(9) An individual meeting the requirements of section 26-31-309(1) (a) and (c), Idaho Code, may make up any deficiency in continuing education requirements as established by rule of the director.

26-31-311. AUTHORITY TO REQUIRE LICENSE AND REGISTRATION. In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the NMLSR. In order to carry out this requirement the director is authorized to participate in the NMLSR. For this purpose, the director may establish by rule or order requirements for licensure as a mortgage loan originator, as necessary including, but not limited to:

- (1) Background checks, to include:
 - (a) Criminal history, through fingerprint or other databases;
 - (b) Civil or administrative records;
 - (c) Credit history; and
 - (d) Any other information as deemed necessary by the NMLSR.
- (2) The setting or resetting as necessary of renewal or reporting dates; and
- (3) Requirements for amending or surrendering a license or any other such activities as the director deems necessary for participation in the NMLSR.

26-31-312. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS. The director shall establish a process whereby mortgage loan originators may challenge the information entered into the NMLSR by the director.

26-31-313. ENFORCEMENT AUTHORITY, VIOLATIONS AND PENALTIES. (1) In order to ensure the effective supervision and enforcement of this part, the director may, pursuant to chapter 52, title 67, Idaho Code:

- (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, or rule or order issued under this chapter;
- (b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee under this part fails at any time to meet the requirements of section 26-31-306, Idaho Code, or section 26-31-309, Idaho Code, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (c) Deny, suspend, revoke, condition or decline to renew a license if the applicant has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending or loan origination activities;
- (d) Order restitution against persons subject to this part for violations of this part;
- (e) Impose penalties on persons subject to this part pursuant to subsections (2) through (4) of this section; and
- (f) Issue orders under this part as follows:
 - (i) Order persons subject to this part to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(ii) Order persons subject to this part to cease any harmful activities or violations of this part, including immediate temporary orders to cease and desist;

(iii) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to this part, if the director determines that such license was erroneously granted or the licensee is currently in violation of this part;

(iv) Order such other affirmative action as the director deems necessary.

(2) The director may impose a civil penalty upon a mortgage loan originator or other person subject to this part if the director finds on the record, after notice and the opportunity for a hearing, that such mortgage loan originator or other person subject to this part has violated or failed to comply with any requirement of this part or any rule promulgated or order issued by the director under this chapter and pertinent to this part.

(3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be twenty-five thousand dollars (\$25,000).

(4) Each violation of this part, or failure to comply with any rule promulgated or order issued by the director under this chapter and pertinent to this part, is a separate and distinct violation or failure.

26-31-314. REMEDIES AVAILABLE TO THE DEPARTMENT. (1) If the director determines that a person subject to this part has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z or of this part or any rule promulgated or order issued under this chapter and pertinent to this part, then the director may bring an action in any court of competent jurisdiction, and upon a showing of any violation, there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part or any rule promulgated or order issued under this chapter and pertinent to this part, and to enforce compliance with this part or any rule promulgated or order issued under this chapter and pertinent to this part;

(b) An order that the person violating any provision of this part, or a rule promulgated or order issued under this chapter and pertinent to this part pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation;

(c) An order allowing the director to recover costs, which may include investigative expenses and attorney's fees;

(d) A declaratory judgment that a particular act, practice or method is a violation of the provisions of this part;

(e) Other appropriate remedies including restitution to borrowers.

(2) If the director finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated or order issued under this chapter and pertinent to this part, the director may, in his discretion, order the person to cease and desist from the violations.

26-31-315. CONFIDENTIALITY. In order to promote effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in section 1512, P.L. 110-289, the requirements under any federal law or chapter 3, title 9, Idaho Code, regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or Idaho state law, including the rules of any federal or Idaho state court, with respect to such information or material, shall continue to apply to such information

or material after the information or material has been disclosed to the NMLSR. Such information and material may be shared with all state and federal regulatory officials having mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 3, title 9, Idaho Code.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) Coordination with chapter 3, title 9, Idaho Code, relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the NMLSR for access by the public.

26-31-316. INVESTIGATION AND EXAMINATION AUTHORITY. In addition to any authority allowed under this chapter, the director shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or inquiry or investigation to determine compliance with this part, the director shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

(a) Criminal, civil and administrative history information including nonconviction data; and

(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(c) Any other documents, information or evidence the director deems relevant to the inquiry or investigation, regardless of the location, possession, control or custody of such documents, information or evidence.

(2) For the purposes of investigating violations or complaints arising under this part, or for the purposes of examination, the director may review, investigate or examine any licensee, individual or person subject to this part, as often as necessary in order to carry out the purposes of this part. The director may subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may subpoena or order such person to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry.

(3) Each licensee, individual or other person subject to this part shall make available to the director upon request the books and records relating to the operations of such licensee, individual or other person

subject to this part. The director may interview the licensee's employer, its employees and agents, its independent contractors, its officers and principals, other mortgage loan originators, agents and customers of the licensee, individual or other person subject to this part. For the purposes of this section, the director shall have free access to the books and records of such persons.

(4) Each licensee, individual or other person subject to this part shall make or compile reports or prepare other information as directed by the director in order to carry out the purposes of this part including, but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the director; and
- (c) Such other information deemed necessary to carry out the purposes of this part.

(5) In making any examination or investigation authorized by this part, the director may control access to any documents and records of the licensee or other person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or other person have been, or are at risk of being altered or destroyed for the purpose of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents and records as necessary to conduct its ordinary business affairs.

(6) In order to carry out the purposes of this section, the director may:

- (a) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;
- (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;
- (c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or other person subject to this part;
- (d) Accept and rely on examination or investigation reports made by other government officials, including those inside and outside the state of Idaho; and
- (e) Accept and rely upon audit reports made by an independent certified public accountant for the licensee, individual or other person subject to this part. The director may incorporate the audit report in the examination report, investigation report or other writing of the director.

(7) The authority of this section shall remain in effect, whether such a licensee, individual or other person subject to this part acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(8) No licensee, individual or other person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information requested by the director.

26-31-317. PROHIBITED ACTS AND PRACTICES. It is a violation of this part for a person or individual subject to this part, in connection with mortgage loan origination activity in this state, to:

(1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides that the person or individual subject to this part may earn a fee or commission through "best efforts" to obtain a loan, even though no loan is actually obtained for the borrower;

(5) Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms, unless the terms are actually available at the time of soliciting, advertising or contracting;

(6) Conduct any business covered by this part without holding a valid license as required under this part, or assist or aid and abet any person in the conduct of business under this part who does not hold a valid license as required under this part;

(7) Fail to make disclosures as required by this part or any other applicable state or federal law including rules or regulations promulgated thereunder;

(8) Fail to comply with provisions of this part or rules promulgated under this part, or fail to comply with any other state or federal law, including the rules and regulations promulgated thereunder, applicable to any business authorized or conducted under this part;

(9) Make any false or deceptive statement or representation, including a false or deceptive statement or representation concerning rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully omit a material fact in connection with any information or reports filed with a government agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat or promise, directly or indirectly, to any appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this part;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction;

(15) Be employed simultaneously by more than one (1) mortgage broker or mortgage lender licensed or required to be licensed under part 2 of this chapter;

(16) Enter into concurrent contractual relationships for delivery of mortgage loan origination services to more than one (1) mortgage broker or mortgage lender licensed or required to be licensed under part 2 of this chapter;

(17) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(18) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(19) Accept any fees at closing which were not previously disclosed fully to the borrower;

(20) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower; or

(21) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower as required by rule pursuant to this chapter.

26-31-318. UNLAWFUL ACTS. Any person, not exempt under the provisions of this part, who engages in mortgage loan origination activities without first obtaining a mortgage loan originator license or without first registering as a mortgage loan originator in accordance with the requirements of this part, shall be guilty of a felony.

26-31-319. NONFEDERALLY INSURED CREDIT UNIONS. Nonfederally insured credit unions which employ loan originators, as defined in P.L. 110-289, shall register such loan originators with the NMLSR by furnishing the information concerning the loan originators' identities set forth in section 1507(a)(2), P.L. 110-289.

26-31-320. UNIQUE IDENTIFIER DISCLOSURE. The unique identifier of any person engaged in the origination of a residential mortgage loan shall be clearly displayed on all residential mortgage loan application forms, solicitations or advertisements, including business cards and websites, and any other document required by rule promulgated under this chapter or order issued by the director under this chapter and pertinent to this part.

26-31-321. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 3. This act shall be in full force and effect on and after July 1, 2009.

Approved April 3, 2009.

CHAPTER 98
(H.B. No. 205)

AN ACT

RELATING TO ELECTION OF HIGHWAY DISTRICT COMMISSIONERS; AMENDING CHAPTER 13, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-1305B, IDAHO CODE, TO PROVIDE PROCEDURES IN ANY ELECTION FOR A HIGHWAY DISTRICT COMMISSIONER IF THERE IS ONLY ONE QUALIFIED CANDIDATE NOMINATED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 13, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-1305B, Idaho Code, and to read as follows:

40-1305B. BOARD OF COMMISSIONERS -- ONE NOMINATION -- NO ELECTION. In any election for a highway district commissioner, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a subdistrict to be filled, it shall not be necessary for the candidate of that subdistrict

to stand for election, and the board of highway district commissioners shall declare such candidate elected as commissioner, and the secretary of the highway district shall immediately make and deliver to such person a certificate of election signed by him and bearing the seal of the district.

Approved April 3, 2009.

CHAPTER 99
(H.B. No. 206)

AN ACT

RELATING TO HIGHWAY DISTRICT COMMISSIONERS; AMENDING SECTION 40-1325, IDAHO CODE, TO PROVIDE THAT HIGHWAY DISTRICT COMMISSIONERS SHALL, PRIOR TO CERTIFYING A PROPERTY TAX LEVY TO THE COMMISSIONERS AND A COUNTY ASSESSOR, ADOPT A BUDGET AND CAUSE A PUBLIC HEARING TO BE HELD ON THE BUDGET AND TO PROVIDE CORRECT TERMINOLOGY; AND REPEALING SECTION 40-1329, IDAHO CODE, RELATING TO COMPLETION AND FINALIZATION OF A BUDGET.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-1325, Idaho Code, be, and the same is hereby amended to read as follows:

40-1325. ADOPTION OF BUDGET -- PUBLIC HEARING. Highway district commissioners shall, prior to certifying ~~an ad-valorem~~ property tax levy to the commissioners and a county assessor, as provided in subsections (1) and (3) of section 63-803, Idaho Code, adopt a budget and cause a public hearing to be held upon the budget.

SECTION 2. That Section 40-1329, Idaho Code, be, and the same is hereby repealed.

Approved April 3, 2009.

CHAPTER 100
(S.B. No. 1005, As Amended)

AN ACT

RELATING TO VULNERABLE ADULTS; AMENDING SECTION 18-1505B, IDAHO CODE, TO REVISE A DEFINITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-1505B, Idaho Code, be, and the same is hereby amended to read as follows:

18-1505B. SEXUAL ABUSE AND EXPLOITATION OF A VULNERABLE ADULT. (1) It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

- (a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex;
- (b) Involve a vulnerable adult in any act of bestiality or sado-masochism as defined in section 18-1507, Idaho Code; or
- (c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.

(2) For the purposes of this section:

(a) "Sexual contact" means any physical contact between a vulnerable adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact; and

(b) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide or other mechanically, electronically or chemically reproduced visual material that depicts a vulnerable adult engaged in, participating in, observing or being used for explicit sexual conduct as defined in section 18-1507, Idaho Code; and

(c) "Vulnerable adult" is as defined in section 18-1505, Idaho Code.

(3) Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty-five (25) years or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both such fine and imprisonment.

(4) It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, as defined in section 18-1507, Idaho Code, he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct as defined in section 18-1507, Idaho Code; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material ~~as defined in section 18-1507, Idaho Code, depicting a vulnerable adult engaged in, observing, or being used for explicit sexual conduct.~~

(5) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(6) Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both such fine and imprisonment.

Approved April 3, 2009.

CHAPTER 101

(S.B. No. 1006, As Amended)

AN ACT

RELATING TO COMPENSATION OF VICTIMS OF CRIMES; AMENDING SECTION 19-5307, IDAHO CODE, TO PROVIDE A METHOD BY WHICH CERTAIN FINES MAY BE COLLECTED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-5307, Idaho Code, be, and the same is hereby amended to read as follows:

19-5307. FINES IN CASES OF CRIMES OF VIOLENCE. (1) Irrespective of any penalties set forth under state law, and in addition thereto, the court, at the time of sentencing or such later date as deemed necessary by the court, may impose a fine not to exceed five thousand dollars (\$5,000) against any defendant found guilty of any felony listed in subsection (2) of this section.

The fine shall operate as a civil judgment against the defendant, and shall be entered on behalf of the victim named in the indictment or information, or the family of the victim in cases of homicide or crimes against children, and shall not be subject to any distribution otherwise required in section 19-4705, Idaho Code. The clerk of the district court may collect

the fine in the same manner as other fines imposed in criminal cases are collected and shall remit any money collected in payment of the fine to the victim named in the indictment or information or to the family of the victim in a case of homicide or crimes against minor children, provided that none of the provisions of this section shall be construed as modifying the provisions of chapter 6, title 11, Idaho Code, chapter 10, title 55, Idaho Code, or section 72-802, Idaho Code. A fine created under this section shall be a separate written order in addition to any other sentence the court may impose.

The fine contemplated in this section shall be ordered solely as a punitive measure against the defendant, and shall not be based upon any requirement of showing of need by the victim. The fine shall not be used as a substitute for an order of restitution as contemplated in section 19-5304, Idaho Code, nor shall such an order of restitution or order of compensation entered in accordance with section 72-1018, Idaho Code, be offset by the entry of such fine.

A defendant may appeal a fine created under this section in the same manner as any other aspect of a sentence imposed by the court. The imposition of a fine created under this section shall not preclude the victim from seeking any other legal remedy; provided that in any civil action brought by or on behalf of the victim, the defendant shall be entitled to offset the amount of any fine imposed pursuant to this section against any award of punitive damages.

(2) The felonies for which a fine created under this section may be imposed are those described in:

Section 18-805, Idaho Code (Aggravated arson);
Section 18-905, Idaho Code (Aggravated assault);
Section 18-907, Idaho Code (Aggravated battery);
Section 18-909, Idaho Code (Assault with intent to commit a serious felony);
Section 18-911, Idaho Code (Battery with intent to commit a serious felony);
Section 18-913, Idaho Code (Felonious administration of drugs);
Section 18-1501, Idaho Code (Felony injury to children);
Section 18-1506, Idaho Code (Sexual abuse of a child under the age of sixteen);
Section 18-1506A, Idaho Code (Ritualized abuse of a child);
Section 18-1507, Idaho Code (Sexual exploitation of a child);
Section 18-1508, Idaho Code (Lewd conduct with a child under the age of sixteen);
Section 18-4001, Idaho Code (Murder);
Section 18-4006, Idaho Code (Felony manslaughter);
Section 18-4014, Idaho Code (Administering poison with intent to kill);
Section 18-4015, Idaho Code (Assault with intent to murder);
Section 18-4502, Idaho Code (First degree kidnapping);
Section 18-5001, Idaho Code (Mayhem);
Section 18-5501, Idaho Code (Poisoning food, medicine or wells);
Section 18-6101, Idaho Code (Rape);
Section 18-6108, Idaho Code (Male rape);
Section 18-6501, Idaho Code (Robbery).

Approved April 3, 2009.

CHAPTER 102
(S.B. No. 1007)

AN ACT

RELATING TO COMPENSATION OF VICTIMS OF CRIMES; AMENDING SECTION 19-4708, IDAHO CODE, TO FURTHER DEFINE A TERM; AMENDING SECTION 19-5305, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE COLLECTION OF RESTITUTION; AND AMENDING SECTION 20-520, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE COLLECTION OF RESTITUTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-4708, Idaho Code, be, and the same is hereby amended to read as follows:

19-4708. COLLECTION OF DEBTS OWED TO COURTS -- CONTRACTS FOR COLLECTION. (1) The clerks of the district court, with the approval of the administrative district judge, may enter into contracts in accordance with this section for collection services for debts owed to courts. The cost of collection shall be paid by the defendant as an administrative surcharge when the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section.

(2) As used in this section:

(a) "Contracting agent" means a person, firm or other entity who contracts to provide collection services.

(b) "Cost of collection" means the fee specified in contracts to be paid to or retained by a contracting agent for collection services.

(c) "Debts owed to courts" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, moneys expended in providing counsel and other defense services to indigent defendants or other charges which a court judgment has ordered to be paid to the court in criminal cases, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law.

(3) The supreme court may adopt rules as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section, procedures to be followed by courts which utilize collection services under such contracts, and procedures for the compromise of debts owed to courts in criminal cases.

(4) Each contract entered into pursuant to this section shall specify the scope of work to be performed and provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection, and shall not exceed thirty-three percent (33%) of the amount collected. The cost of collection shall be deducted from the amount collected but shall not be deducted from the debts owed to courts.

(5) Contracts entered into shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the district court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(6) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute the amounts collected in accordance with the law.

SECTION 2. That Section 19-5305, Idaho Code, be, and the same is hereby amended to read as follows:

19-5305. COLLECTION OF JUDGMENTS. (1) After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

(2) The clerk of the district court may take action to collect on the order of restitution on behalf of the victim and, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708, Idaho Code, for the collection of the restitution.

SECTION 3. That Section 20-520, Idaho Code, be, and the same is hereby amended to read as follows:

20-520. SENTENCING. (1) Upon the entry of an order finding the juvenile is within the purview of the act, the court shall then hold a sentencing hearing in the manner prescribed by the Idaho juvenile rules to determine the sentence that will promote accountability, competency development and community protection. Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court may request and, if requested, shall receive a report containing the results of an inquiry into the home environment, past history, competency development, prevention or out of home placement services provided, and the social, physical and mental condition of the juvenile. The court shall not consider or review the report prior to the entry of an order of adjudication. Upon presentation and consideration of the report by the court, the court may proceed to sentence the juvenile as follows:

(a) Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order, except the court may place a juvenile on formal probation for a period not to exceed the juvenile's twenty-first birthday if the court finds that the juvenile has committed a crime of a sexual nature;

(b) Sentence the juvenile to detention pursuant to this act for a period not to exceed thirty (30) days for each act, omission or status which is prohibited by the federal, state, local or municipal law or ordinance by reason of minority only. The sentence shall not be executed unless the act, omission or status is in violation of section 922(x) of title 18, United States Code, or the court finds that the juvenile has violated the court's decree imposing the sentence as provided below.

If the court, after notice and hearing, finds that a juvenile has violated the court's decree imposing the sentence under circumstances that bring the violation under the valid court order exception of the federal juvenile justice and delinquency prevention act of 1974, as amended, the court may commit the juvenile to detention for the period of detention previously imposed at sentencing;

(c) Commit the juvenile to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile has been adjudicated as an habitual status offender;

(d) If the juvenile has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile to detention for a period not to exceed one hundred eighty (180) days for each unlawful or criminal act;

(e) Whenever a court commits a juvenile to a period of detention it shall notify the school district where the detention facility is located. No juvenile who is found to come within the purview of the act for the commission of a status offense shall be sentenced to detention in a jail facility unless an adjudication has been made that the juvenile is an habitual status offender;

(f) Commit the juvenile to detention and suspend the sentence on specific probationary conditions;

(g) The court may suspend or restrict the juvenile's driving privileges for such periods of time as the court deems necessary, and the court may take possession of the juvenile's driver's license. The juvenile may request restricted driving privileges during a period of suspension, which the court may allow if the juvenile shows by a preponderance of evidence that driving privileges are necessary for his employment or for family health needs;

(h) The court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile in a hospital or other suitable facility;

(i) The court may order that the department of health and welfare conduct a comprehensive substance abuse assessment of the juvenile. After receiving the comprehensive substance abuse assessment, and upon a finding by the court that treatment will provide a cost-effective means of achieving the sentencing goals of accountability, competency development and community protection, the court may order that the juvenile receive immediate treatment for substance abuse in keeping with a plan of treatment approved by the court. The initial cost of the assessment and treatment shall be borne by the department of health and welfare. The director of the department of health and welfare may promulgate rules consistent with this paragraph (i) to establish a schedule of fees to be charged to parents by the department of health and welfare for such services based upon the cost of the services and the ability of parents to pay;

(j) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one (1) parent, restrictions on the juvenile's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;

(k) The court may make any other reasonable order which is in the best interest of the juvenile or is required for the protection of the public, except that no person under the age of eighteen (18) years may be committed to jail, prison or a secure facility which does not meet the standards set forth in section 20-518, Idaho Code, unless jurisdiction over the individual is in the process of being waived or has been waived pursuant to section 20-508 or 20-509, Idaho Code. The court may combine several of the above-listed modes of disposition where they are compatible;

(l) An order under the provisions of this section for probation or placement of a juvenile with an individual or an agency may provide a schedule for review of the case by the court;

(m) Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code;

(n) Order the case and all documents and records connected therewith transferred to the magistrate division of the district court for the county where the juvenile and/or parents reside if different than the county where the juvenile was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;

(o) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile and the community;

(p) The court shall assess a twenty dollar (\$20.00) detention/probation training academy fee against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter. All moneys raised pursuant to this paragraph shall be transmitted by the court for deposit in the juvenile corrections fund which is created in section 20-542, Idaho Code;

(q) Additionally, the court shall assess a fee of sixty cents (60¢) per hour of community service against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter and the court is ordering community service. Such fee is to be remitted by the court to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service pursuant to this chapter;

(r) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the juvenile's nineteenth birthday, unless the custody review board determines that extended time in custody is necessary to address competency development, accountability, and community protection; provided however, that no juvenile shall remain in the custody of the department beyond the juvenile's twenty-first birthday. The department shall adopt rules implementing the custody review board and operations and procedures of such board;

(s) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten (10) years to a period of detention or to the custody of the department of juvenile corrections for placement in secure confinement.

(2) When an order is entered pursuant to this section, the juvenile shall be transported to the facility or program so designated by the court or the department, as applicable, by the sheriff of the county where the juvenile resides or is committed, or by an appointed agent. When committing a juvenile to the department, or another entity, the court shall at once forward to the department or entity a certified copy of the order of commitment.

(3) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the juvenile or his parents or both to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code. The amount of restitution which may be ordered by the court shall not be subject to the limitations of section 6-210, Idaho Code. Court-ordered restitution shall be paid prior to any other court-ordered payments unless the court specifically orders otherwise. The clerk of the district court, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708, Idaho Code, for the collection of the restitution.

(4) The court may order the juvenile's parents, legal guardian or custodian to pay the charges imposed by community programs ordered by the court for the juvenile, or the juvenile's parents, legal guardian or custodian.

(5) Any parent, legal guardian or custodian violating any order of the court entered against the person under the provisions of this chapter shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

Approved April 3, 2009.

CHAPTER 103

(S.B. No. 1017, As Amended, As Amended)

AN ACT

RELATING TO ATTENDANCE AT SCHOOLS; AMENDING SECTION 16-1602, IDAHO CODE, TO FURTHER DEFINE A TERM; AMENDING SECTION 33-202, IDAHO CODE, TO REVISE A PROVISION RELATING TO SCHOOL ATTENDANCE REQUIREMENTS; AND AMENDING SECTION 33-207, IDAHO CODE, TO REVISE A PROVISION RELATING TO PROCEEDINGS AGAINST PARENTS OR GUARDIANS AND TO PROVIDE A CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-1602, Idaho Code, be, and the same is hereby amended to read as follows:

16-1602. DEFINITIONS. For purposes of this chapter:

- (1) "Abused" means any case in which a child has been the victim of:
 - (a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or
 - (b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.
- (2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.
- (3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.
- (4) "Adjudicatory hearing" means a hearing to determine:
 - (a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;
 - (b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interests of the child require protective supervision or vesting legal custody of the child in an authorized agency;
 - (c) Whether aggravated circumstances as defined in section 16-1619, Idaho Code, exist.
- (5) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.
- (6) "Case plan hearing" means a hearing to:
 - (a) Review, approve, modify or reject the case plan; and
 - (b) Review reasonable efforts being made to rehabilitate the family; and
 - (c) Review reasonable efforts being made to reunify the children with a parent or guardian.
- (7) "Child" means an individual who is under the age of eighteen (18) years.
- (8) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(9) "Commit" means to transfer legal and physical custody.

(10) "Concurrent planning" means a planning model that prepares for and implements different outcomes at the same time.

(11) "Court" means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(12) "Custodian" means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.

(13) "Department" means the department of health and welfare and its authorized representatives.

(14) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activity of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(15) "Family or household member" shall have the same meaning as in section 39-6303(6), Idaho Code.

(16) "Foster care" means twenty-four (24) hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility.

(17) "Grant administrator" means the supreme court or any organization or agency as may be designated by the supreme court in accordance with such procedures as may be adopted by the supreme court. The grant administrator shall administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(18) "Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(19) "Guardian ad litem coordinator" means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties set forth in section 16-1632, Idaho Code.

(20) "Guardian ad litem program" means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(21) "Homeless," as used in this chapter, shall mean that the child is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety or well-being of the child.

(22) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(23) "Legal custody" means a relationship created by court order, which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(b) To supply the child with food, clothing, shelter and incidental necessities.

(c) To provide the child with care, education and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children; and

to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(24) "Mental injury" means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(25) "Neglected" means a child:

(a) Who is without proper parental care and control, or subsistence, ~~education,~~ medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; ~~provided,~~ however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment, shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but ~~further provided~~ this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(26) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(27) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(28) "Protective order" means an order created by the court granting relief as delineated in section 39-6306, Idaho Code, and shall be for a period not to exceed three (3) months unless otherwise stated herein. Failure to comply with the order shall be a misdemeanor.

(29) "Protective supervision" means a legal status created by court order in neglect and abuse cases whereby the child is permitted to remain in his home under supervision by the department.

(30) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(31) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

(32) "Supportive services," as used in this chapter, shall mean services which assist parents with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations which allow parents with a disability to benefit from other services including, but not limited to, Braille texts or sign language interpreters.

SECTION 2. That Section 33-202, Idaho Code, be, and the same is hereby amended to read as follows:

33-202. SCHOOL ATTENDANCE COMPULSORY. The parent or guardian of any child resident in this state who has attained the age of seven (7) years at

the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. ~~Unless the child is otherwise comparably instructed, the parent or guardian shall cause the child to attend a public,~~ To accomplish this, a parent or guardian shall either cause the child to be privately instructed by, or at the direction of, his parent or guardian; or enrolled in a public school or public charter school, including an on-line or virtual charter school or private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended.

SECTION 3. That Section 33-207, Idaho Code, be, and the same is hereby amended to read as follows:

33-207. PROCEEDINGS AGAINST PARENTS OR GUARDIANS. (1) Whenever the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, have failed, neglected or refused to place the child in school as provided in this chapter or to have the child ~~comparably~~ instructed as defined in section 33-202, Idaho Code, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the juvenile corrections act or as otherwise provided in subsection (2) of this section.

(2) Whenever it is determined by the board of trustees of any school district that a child enrolled in public school is an habitual truant, as defined in section 33-206, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the child's residence. Proceedings may be brought directly against any parent or guardian of a public school pupil who is found to have knowingly allowed such pupil to become an habitual truant, and such parent or guardian shall be guilty of a misdemeanor.

(3) Whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child not enrolled in a public school are failing to meet the requirements of section 33-202, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the pupil's residence and recommend that a petition shall be filed in the magistrates division of the district court of the county of the pupil's residence, in such form as the court may require under the provisions of section 20-510, Idaho Code.

Approved April 3, 2009.

CHAPTER 104
(S.B. No. 1042)

AN ACT

RELATING TO PRISONERS; AMENDING SECTION 18-2507, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO STATEMENTS REGARDING COSTS OF CERTAIN PROSECUTIONS, TO REVISE PROCEDURES FOR THE SUBMISSION AND PAYMENT OF CLAIMS AND TO PROVIDE CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-2507, Idaho Code, be, and the same is hereby amended to read as follows:

18-2507. EXPENSE OF PROSECUTION -- HOW PAID. Whenever a person is prosecuted under any of the provisions of section 18-2505, Idaho Code, and whenever a prisoner in the custody of the board of correction housed in a state correctional facility, as defined in section 18-101A, Idaho Code, shall be prosecuted for any crime committed therein, the clerk of the district court shall make out a statement of all the costs incurred by the county for the prosecution of such case, and for the guarding and keeping of such prisoner, and when certified by the judge who tried the case, such statement shall be ~~audited~~ submitted to and reviewed by the board of examiners. If approved, the board of examiners shall submit the claim, ~~with a request for an appropriation, to the legislature at its first session after the rendition of such claim. If the legislature appropriates funds for such claim, the amount shall be paid by the board of examiners to the Idaho department of correction who shall pay the claim~~ to the treasurer of the county where the trial was ~~had~~ conducted. The provisions of this section shall apply to prosecution of a prisoner in the custody of the board of correction and housed in a private correctional facility unless otherwise provided for in any contract between the state of Idaho and the private prison contractor entered into pursuant to chapter 2, title 20, Idaho Code.

Costs of prosecution of all other prisoners housed in a private correctional facility shall be recoverable from the private prison contractor, as provided in section 20-809, Idaho Code.

Approved April 3, 2009.

CHAPTER 105
(S.B. No. 1066)

AN ACT

RELATING TO THE IDAHO WHOLESALE DRUG DISTRIBUTION ACT; AMENDING SECTION 54-1752, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1755, IDAHO CODE, TO REVISE THE CONTENTS OF A PEDIGREE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1752, Idaho Code, be, and the same is hereby amended to read as follows:

54-1752. DEFINITIONS. As used in sections 54-1751 through 54-1759, Idaho Code:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales

or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's ~~third party~~ third party logistics provider, ~~or~~ from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:

(a) A pharmacy to a patient;

(b) Other designated persons authorized by law to dispense or administer such drug to a patient;

(c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(e) A chain pharmacy warehouse to the chain pharmacy warehouse's intra-company pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.

(11) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(12) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(13) "Repackager" means a person who repackages.

(14) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(15) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:

- (a) Manufacturers;
- (b) Repackagers;
- (c) Own-label distributors;
- (d) Private-label distributors;
- (e) Jobbers;
- (f) Brokers;
- (g) Warehouses, including manufacturers' and distributors' warehouses;
- (h) Manufacturer's exclusive distributors;
- (i) Authorized distributors of record;
- (j) Drug wholesalers or distributors;
- (k) Independent wholesale drug traders;
- (l) Specialty wholesale distributors;
- (m) Third party logistics providers;
- (n) Retail pharmacies that conduct wholesale distribution; and
- (o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.

(16) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- (b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.
- (c) The distribution of prescription drug samples by manufacturers' representatives.

(d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.

(e) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.

(f) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.

(g) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(h) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.

(i) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(j) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.

SECTION 2. That Section 54-1755, Idaho Code, be, and the same is hereby amended to read as follows:

54-1755. PEDIGREE. (1) In General. Each person who is engaged in wholesale distribution of prescription drugs, including repackagers, but excluding the original manufacturer of the finished form of the prescription drug, that leaves, or has ever left, the normal distribution channel shall, before each wholesale distribution of such drug, provide a pedigree to the person who receives such drug.

(a) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution of prescription drugs.

(b) The board shall determine by July 1, 2009, a targeted implementation date for electronic track and trace pedigree technology. Such a determination shall be based on consultation with manufacturers, distributors and pharmacies responsible for the sale and distribution of prescription drug products in this state. After consultation with interested stakeholders and prior to implementation of the electronic pedigree, the board shall deem that the technology is universally available across the entire prescription pharmaceutical supply chain. The implementation date for the mandated electronic track and trace pedigree technology will be no sooner than July 1, 2010, and may be extended by the board in one (1) year increments if it appears the technology is not universally available across the entire prescription pharmaceutical supply chain.

(2) Authentication. Each person who is engaged in the wholesale distribution of a prescription drug, including repackagers, but excluding the original manufacturer of the finished form of the prescription drug, who is provided a pedigree for a prescription drug and attempts to further distribute that prescription drug, shall affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(3) Contents. The pedigree shall:

(a) Include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, or the manufacturer's third party logistics provider, colicensed product partner, ~~or~~ manufacturer's exclusive distributor, or a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At minimum, the necessary pedigree information shall include:

(i) Name, address, telephone number and, if available, the e-mail address, of each owner of the prescription drug, and each wholesale distributor of the prescription drug;

(ii) Name and address of each location from which the product was shipped, if different from the owner's;

(iii) Transaction dates; and

(iv) Certification that each recipient has authenticated the pedigree.

(b) At minimum, the pedigree shall also include the:

(i) Name of the prescription drug;

(ii) Dosage form and strength of the prescription drug;

(iii) Size of the container;

(iv) Number of containers;

(v) Lot number and national drug code number of the prescription drug; and

(vi) Name of the manufacturer of the finished dosage form.

(4) Maintenance Provisions. Each pedigree or electronic file shall be:

(a) Notwithstanding the provisions in section 54-1735, Idaho Code, maintained by the purchaser and the wholesale distributor for not less than three (3) years from the date of sale or transfer; and

(b) Available for inspection or use within five (5) business days upon a request of an authorized officer of the law.

(5) Implementation. The board shall adopt rules and a form relating to the requirements of this section no later than ninety (90) days after the effective date of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 3, 2009.

CHAPTER 106
(S.B. No. 1076)

AN ACT

RELATING TO THE IDAHO CONRAD J-1 VISA WAIVER PROGRAM AND THE NATIONAL INTEREST WAIVER PROGRAM; AMENDING THE HEADING FOR CHAPTER 61, TITLE 39, IDAHO CODE, TO INCLUDE THE NATIONAL INTEREST WAIVER PROGRAM; AMENDING SECTION 39-6101, IDAHO CODE, TO REVISE THE SHORT TITLE; AMENDING SECTION 39-6102, IDAHO CODE, TO REVISE THE CHAPTER PURPOSE; AMENDING SECTION 39-6104, IDAHO CODE, TO ADD REGULATIONS INCORPORATED BY REFERENCE; AMENDING SECTION 39-6105, IDAHO CODE, TO REVISE DEFINITIONS, TO DEFINE TERMS AND TO REMOVE A DEFINITION; AMENDING SECTION 39-6106, IDAHO

CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR NATIONAL INTEREST WAIVER REQUEST GENERAL REQUIREMENTS, TO PROVIDE FOR CERTAIN LIMITATIONS ON THE NATIONAL INTEREST WAIVER PROGRAM, TO PROVIDE FOR DISCRETIONARY AND VOLUNTARY DEPARTMENT PARTICIPATION IN THE NATIONAL INTEREST WAIVER PROGRAM, TO PROVIDE A STATEMENT ON THE DEVELOPMENT OF PROCEDURES FOR THE ISSUANCE OF NATIONAL INTEREST WAIVER RECOMMENDATIONS AND TO CLARIFY TERMINOLOGY; AMENDING SECTION 39-6107, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE RESTRICTIONS ON THE NATIONAL INTEREST WAIVER PROGRAM, TO PROVIDE AN EXCEPTION TO RESTRICTIONS, TO PROVIDE AN EXCEPTION TO A CERTAIN TIME REQUIREMENT, TO REVISE PROGRAM PURPOSE AND TO CLARIFY TERMINOLOGY; AMENDING SECTION 39-6108, IDAHO CODE, TO PROVIDE CERTAIN NATIONAL INTEREST WAIVER APPLICANT CRITERIA AND TO REVISE APPLICANT CRITERIA; AMENDING SECTION 39-6109, IDAHO CODE, TO CLARIFY TERMINOLOGY; AMENDING CHAPTER 61, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-6109A, IDAHO CODE, TO PROVIDE CONTRACT REQUIREMENTS FOR NATIONAL INTEREST WAIVERS; AMENDING SECTION 39-6110, IDAHO CODE, TO REVISE PROPOSED PRACTICE LOCATION CRITERIA AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-6111, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR CERTAIN APPLICATION AND ELIGIBILITY CRITERIA FOR A J-1 PETITIONING PHYSICIAN, TO PROVIDE WHEN CERTAIN CRITERIA MUST BE MET, TO REVISE A CERTAIN DOCUMENTATION REQUIREMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 61, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-6111A, IDAHO CODE, TO PROVIDE CRITERIA FOR THE NATIONAL INTEREST WAIVER PETITIONING PHYSICIAN; AMENDING SECTION 39-6112, IDAHO CODE, TO REVISE THE TIMING OF CERTAIN NOTIFICATION, VERIFICATION AND REPORTING REQUIREMENTS, TO PROVIDE CERTAIN REPORTING REQUIREMENTS FOR THE NATIONAL INTEREST WAIVER, TO REVISE TIMING REQUIREMENTS ON EMPLOYMENT CONTRACT AMENDMENTS AND TO CLARIFY TERMINOLOGY; AMENDING SECTION 39-6113, IDAHO CODE, TO PROVIDE FOR AN APPLICATION FEE FOR NATIONAL INTEREST WAIVER REQUESTS; AMENDING SECTION 39-6114, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE A CERTAIN DOCUMENTATION REQUIREMENT FOR A J-1 VISA WAIVER REQUEST APPLICATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 61, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-6114A, IDAHO CODE, TO PROVIDE REQUIRED APPLICATION FORMS AND DOCUMENTS FOR A NATIONAL INTEREST WAIVER REQUEST; AMENDING SECTION 39-6116, IDAHO CODE, TO REVISE TERMINOLOGY, TO REQUIRE THE DEPARTMENT OF HEALTH AND WELFARE TO ACKNOWLEDGE RECEIPT OF A NATIONAL INTEREST WAIVER APPLICATION WITHIN A CERTAIN TIME, TO CLARIFY TERMINOLOGY, TO PERMIT THE DEPARTMENT TO PROVIDE AN ATTESTATION LETTER TO THE IMMIGRATION AGENCY, TO PROVIDE FOR AN EXPLANATION OF A DEPARTMENT DECISION TO DECLINE A NATIONAL INTEREST WAIVER REQUEST, TO PERMIT THE DEPARTMENT TO DENY A NATIONAL INTEREST WAIVER REQUEST, TO PERMIT THE DEPARTMENT TO WITHDRAW A NATIONAL INTEREST WAIVER RECOMMENDATION FOR SPECIFIED REASONS, TO REVISE THE REASONS THE DEPARTMENT MAY WITHDRAW A WAIVER REQUEST AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 39-6117, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR DENIAL OF FUTURE PARTICIPATION IN THE NATIONAL INTEREST WAIVER PROGRAM FOR SPECIFIED REASONS AND TO REVISE THE TIME FRAME IN WHICH A PROGRAM PARTICIPANT MUST REMAIN IN THE PROGRAM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 61, Title 39, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 61

IDAHO CONRAD J-1 VISA WAIVER AND NATIONAL INTEREST WAIVER PROGRAMS

SECTION 2. That Section 39-6101, Idaho Code, be, and the same is hereby amended to read as follows:

39-6101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Conrad J-1 Visa Waiver Program and National Interest Waiver Program."

SECTION 3. That Section 39-6102, Idaho Code, be, and the same is hereby amended to read as follows:

39-6102. PURPOSE. ~~The "Idaho Conrad J-1 Visa Waiver Program" would authorize the state of Idaho department of health and welfare to recommend up to thirty (30) foreign trained physicians per federal fiscal year to locate in communities that are federally designated as having a health workforce shortage. Final approval of J-1 visa waiver requests are made by the U.S. department of state and the bureau of citizenship and immigration services.~~ Under this chapter, rural and underserved communities in Idaho would be able to apply for the placement of a foreign trained physician after demonstrating that they are unable to recruit an American physician, and all other recruitment/placement possibilities have proven to be inaccessible.

(1) The "Idaho Conrad J-1 Visa Waiver Program" authorizes the Idaho department of health and welfare to recommend up to thirty (30) foreign trained physicians per federal fiscal year to locate in communities that are federally designated as having a health workforce shortage. Final approval of J-1 visa waiver requests are made by the United States bureau of citizenship and immigration services.

(2) The "National Interest Waiver Program" allows the Idaho department of health and welfare to testify that it is in the public's interest that a waiver be granted to a foreign trained physician who commits to locating in a community that is federally determined as having a health workforce shortage. Final approval of the national interest waiver request is made by the United States bureau of citizenship and immigration services.

SECTION 4. That Section 39-6104, Idaho Code, be, and the same is hereby amended to read as follows:

39-6104. INCORPORATION BY REFERENCE. P.L. 103-416, amended by P.L. 107-273, November 2, 2002, 8 U.S.C. 1184(1) and 22 CFR sec. 514.44(e), F.R. volume 60, No. 197, 8 CFR sec. 214.12, 8 CFR sec. 245 and 18 U.S.C. 1001 are incorporated by reference.

SECTION 5. That Section 39-6105, Idaho Code, be, and the same is hereby amended to read as follows:

39-6105. DEFINITIONS. As used in this chapter:

(1) "Applicant" means a health care facility that seeks to employ a physician and is requesting state support of a J-1 visa waiver or national interest waiver.

(2) "Area of underservice" means a health professional shortage area in primary care or mental health, a medically underserved area, or a medically underserved population, federally designated by the secretary of health and human services. Physician scarcity areas as determined by the centers for medicaid and medicare services are included for the purpose of placing national interest waiver petitioning physicians.

(3) "Department" means the Idaho department of health and welfare.

(4) "De-designation threshold" means the number of full-time equivalent primary care physicians necessary to remove the federal designation as an area of underservice.

(5) "Employment contract" means a legally binding agreement between the applicant and the physician named in the J-1 visa waiver or national interest waiver application which contains all terms and conditions of employment, including, but not limited to, the salary, benefits, length

of employment and any other consideration owing under the agreement. The employment contract must meet all state and federal criteria, including labor and immigration rules.

(6) "Federal fiscal year" means the twelve (12) months which commence the first day of October in each year and close on the thirtieth day of September of the following year.

(7) "Full time" means a working week of a minimum of forty (40) hours at a one (1) or more health care facility facilities.

(8) "Health care facility" means an entity with an active Idaho taxpayer identification number doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of primary medical or mental health care.

(9) "Interested government agency" means an agency that has the authority from the United States department of state to submit requests for J-1 visa waivers of foreign physician petitioners on behalf of public interest.

(10) "J-1 visa" means an entrance permit into the United States for a foreign trained physician who is a nonimmigrant admitted under section 101(a)(15)(J) of the United States information and education exchange act or who acquired such status or who acquired exchange visitor status under the act.

(11) "J-1 visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his home country for a two (2) year period following medical residency training.

(12) "National interest waiver" means an exemption from the labor certification process administered by the United States department of labor for foreign physicians whose will to stay in the United States and work in an area of underservice in Idaho is determined to be in the public interest by the Idaho department of health and welfare.

(13) "New start" means a health care facility as defined in subsection (8) of this section, that has been in existence for twelve (12) months or less.

(124) "Physician" means the foreign physician, named in the J-1 visa waiver or national interest waiver application, who requires a waiver to remain in the United States to practice medicine.

(135) "Primary care" means a medical doctor or doctor of osteopathy licensed in pediatrics, family medicine, internal medicine, obstetrics, gynecology, or psychiatry.

(146) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon financial hardship and federal poverty guidelines.

(157) "Unmet need" means a vacancy or shortage of primary care health physicians experienced by a community or population, as defined by federally designated health professional shortage areas or medically underserved areas/populations.

(168) "Vacancy" means a full-time physician practice opportunity in the delivery of primary care services.

~~(17) "visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his home country for a two (2) year period following medical residency training.~~

SECTION 6. That Section 39-6106, Idaho Code, be, and the same is hereby amended to read as follows:

39-6106. GENERAL REQUIREMENTS AND LIMITATIONS. (1) J-1 visa waiver or national interest waiver request. The department may only submit a ~~visa~~ waiver request when:

(a) The application contains all of the required information and documentation; and

- (b) The application meets all state and federal criteria; and
 - (c) Foreign exchange physicians having a J-1 case number assigned by the United States department of state have paid all federal processing fees; and
 - (d) The applicant has paid the state of Idaho application processing fee.
- (2) Limitations of department actions.
- (a) Prior to submission of an application, the department may provide information to the applicant on preparing a complete application.
 - (b) The department will not be responsible for adding any information to incomplete application packets.
 - (c) For applicants who have benefitted from department waiver requests previously, the applicant's history of compliance will be a consideration in future decisions for waiver requests.
 - (d) In any single program year, a health care facility in any one (1) area of underservice:
 - (i) Will not be allotted more than two (2) J-1 visa waiver request applications; and
 - (ii) Will not exceed by more than one and nine-tenths (1.9) full-time equivalents, the number of J-1 physicians needed to eliminate the physician shortage as defined by the current de-designation threshold in any single program year.
 - (e) The shortage area designation must be current on the date the United States department of state reviews and recommends the application and on the date the immigration agency approves the J-1 visa waiver and national interest waiver. Any application that is being submitted to the department at the end of the three (3) year health professional shortage area designation cycle may be summarily denied if the renewal is not obtained.
 - (i) Participation by the department in the ~~Idaho-conrad~~ J-1 visa waiver program and in the national interest waiver program is completely discretionary and voluntary. The department may elect not to participate in the program at any time. The submission of a complete waiver application package does not ensure the department will recommend a waiver. The department reserves the right to recommend or decline any request for a waiver.
 - (ii) The department, its employees or agents are held harmless of any perceived consequence for the denial of a waiver petitioner, or the approved placement of one that is not favorable.
 - (iii) Application procedures for ~~Idaho-conrad~~ J-1 visa waiver physician placements were developed by the department in compliance with P.L. 103-416 and subsequent revisions. ~~They~~ The procedures for the issuance of national interest waiver recommendations were developed by the department in compliance with 8 CFR sec. 214.12 and 8 CFR sec. 245 and subsequent revisions. These procedures are subject to updates and changes at any time. Interpretation of these procedures rests solely with the department in consultation with the appropriate federal agencies.

SECTION 7. That Section 39-6107, Idaho Code, be, and the same is hereby amended to read as follows:

39-6107. APPLIED PRINCIPLES. (1) Option of last resort. The J-1 visa waiver and national interest waiver programs ~~is~~ are considered a final source for recruiting qualified physicians. ~~It is~~ These programs are not a substitute for broad recruiting efforts for graduates from United States medical schools, but an option of last resort. Any application that qualifies for consideration under any other interested government agency or federal program, such as the one administered by the department of health

and human services, must be submitted under that program in lieu of the ~~Idaho Conrad~~ J-1 visa waiver program. The option of last resort principle does not apply to national interest waiver petitioning physicians for whom a J-1 visa waiver request was issued by the state of Idaho; in which case, physician retention is the objective if it is determined to be in the public interest.

(2) Waiver request applications will only be considered for health care facilities that can provide evidence of sustained active recruitment over a period of at least six (6) months for the primary care vacancy in the practice location. The six (6) month vacancy requirement does not apply to a national interest waiver petitioning physician for whom a J-1 visa waiver request was issued by the state of Idaho.

(3) The J-1 visa waiver program and national interest waiver program will be used to assist health care facilities that can document the provision of primary health care services to all residents of the ~~federally designated underserved~~ determined area of underservice. When a federal designation is for an underserved population, the health care facility must document the provision of care to, and assure access by, the underserved population.

SECTION 8. That Section 39-6108, Idaho Code, be, and the same is hereby amended to read as follows:

39-6108. CRITERIA FOR APPLICANTS. (1) Applicants must be existing health care facilities that:

- (a) Have an active taxpayer identification number in Idaho; and
- (b) Have provided medical or mental health care in Idaho for a minimum of twelve (12) months prior to submitting the application, or meet the requirements for a new start as defined in this chapter.

(2) The waiver request to the department must come from a U.S. health care facility on behalf of the physician and not directly from the physician or his representative.

(3) J-1 visa waiver and national interest waiver petitioners with fellowship training must contract with employers to provide primary care services full time.

(4) Applicants must not be former J-1 visa waiver or national interest waiver physicians who are currently fulfilling their required three (3) or five (5) year obligation.

(5) Applicants may not submit waiver requests for a relative.

(6) Applicants must accept all patients regardless of their ability to pay.

(7) Except for state institutional and correctional facilities designated as federal shortage areas, the applicant must:

- (a) Serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of the federal designation.
- (b) Agree to implement a sliding fee discount schedule. The schedule must be:

- (i) Available in Spanish (where applicable) and English; and
- (ii) Posted conspicuously; and
- (iii) Distributed in hard copy on request to individuals making or keeping appointments with that physician.

(8) Applicants must have a signed employment contract with the physician, and guarantee wages for the ~~three (3) years~~ duration of the contract.

(9) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status and payer mix.

(10) Applicants must first apply through any organization with federal or interested governmental agency authority which submits waiver requests for Idaho's underserved rural areas. Documentation which fully explains why this route was not taken for placement is required as part of the application.

(11) The physician's name and practice location will be made available to the public as a provider of primary health who accepts medicare, medicaid and utilizes a sliding fee schedule for the low-income population.

(12) An assurance letter that the health care facility, its principals, and the J-1 or national interest waiver petitioning physician are not under investigation for, under probation for, or under restriction for medicare or medicaid fraud, or other violations of law or licensure restrictions that may indicate that it may not be in the public interest that a waiver ~~of the two (2) year home residency requirement~~ be granted, must be provided.

(13) The applicant and its principals must be free of default on any federal or state scholarship or loan repayment program such as the national health service corps or by the state.

SECTION 9. That Section 39-6109, Idaho Code, be, and the same is hereby amended to read as follows:

39-6109. CONTRACT REQUIREMENTS FOR J-1 VISA WAIVERS. Throughout the period of obligation, regardless of physician's visa status, the employment contract must:

- (1) Meet state and federal requirements;
- (2) Not prevent the physician from providing medical services in the designated shortage area after the term of employment. A noncompetition clause or any provision that purports to limit the J-1 visa waiver physician's ability to remain in the area upon completion of the contract term is prohibited by regulation;
- (3) State that the physician must serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of the federal designation for the area of underservice full time;
- (4) Include a notarized statement by the physician that he agrees to meet the requirements set forth in section 214(1) of the immigration and nationality act;
- (5) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II of the local prevailing wage for the field of practice in the area to be served;
- (6) Specify that benefits offered are not included as part of base salary;
- (7) Include leave (annual, sick, continuing medical education and holiday);
- (8) State that amendments shall adhere to state and federal J-1 visa waiver requirements;
- (9) Acknowledge that the contract may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily required three (3) years of medical service have expired;
- (10) Be assignable only by the employer to a successor with concurrence of the department;
- (11) Include the practice site address, the days and hours of practice, field of medicine, and a statement that on-call and travel times are not included in the minimum hours;
- (12) Not commence until after the physician's J-1 waiver and appropriate work authorization are approved and his residency program has been successfully completed. The contract shall affirm that no transfer or other modification regarding the duration of contract dates will be approved unless extenuating circumstances are shown to exist, as determined by the department and approved by the United States attorney general in accordance with applicable federal rules and regulations;
- (13) Not be subject to changes which result in termination of contract, change in practice scope, or relocation from a site approved in the application. Any proposed changes must be presented in writing to the department for consideration and approval at least thirty (30) days prior to the pro-

posed change. Moving or placement of a physician to a location that was not approved by the department will result in the physician and applicant being in noncompliance with the program and will be reported as such to the immigration agency. It will also limit the applicant's future participation in the program;

(14) Be signed by both the J-1 visa waiver petitioning physician and the applicant employer, and the date it is signed must be clear.

SECTION 10. That Chapter 61, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-6109A, Idaho Code, and to read as follows:

39-6109A. CONTRACT REQUIREMENTS FOR NATIONAL INTEREST WAIVERS. Throughout the period of obligation, regardless of physician's visa status, the employment contract must:

- (1) Meet state and federal requirements;
- (2) Not prevent the physician from providing medical services in the designated shortage area after the term of employment. A noncompetition clause or any provision that purports to limit the national interest waiver physician's ability to remain in the area upon completion of the contract term is prohibited;
- (3) State that the physician must serve medicare clients, medicaid clients, low-income clients, uninsured clients and the population of the federal designation for the area of underservice full time;
- (4) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II of the local prevailing wage for the field of practice in the area to be served;
- (5) Specify that benefits offered are not included as part of the base salary;
- (6) Include annual, sick, continuing medical education and holiday leave;
- (7) State that amendments shall adhere to state and federal national interest waiver requirements;
- (8) Acknowledge that the contract may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily required five (5) years of medical service have expired;
- (9) Be assignable only by the employer to a successor with concurrence of the department;
- (10) Include the practice site address, the days and hours of practice and field of medicine;
- (11) Include a statement that the employment will start within ninety (90) days after the waiver approval has been issued;
- (12) Not be subject to changes which result in termination of contract, change in practice scope or relocation from a site approved in the application. Any proposed changes must be presented in writing to the department for consideration and approval at least thirty (30) days prior to the proposed change. Moving or placement of a physician to a location that was not approved by the department will result in the physician and applicant being in noncompliance with the program. It will also limit the applicant's future participation in the program; and
- (13) Be signed by both the national interest waiver petitioning physician and the applicant employer, and the date it is signed must be clear.

SECTION 11. That Section 39-6110, Idaho Code, be, and the same is hereby amended to read as follows:

39-6110. CRITERIA FOR PROPOSED PRACTICE LOCATION. (1) The proposed practice location must be located in:

- (a) A federally designated primary care health professional shortage area; ~~or~~
- (b) A federally designated mental health professional shortage area for psychiatrists; ~~or~~
- (c) An area having a federal designation as a medically underserved area or a medically underserved population; ~~or~~
- (d) A physician scarcity area for placement consideration of national interest waiver petitioning physicians only; or
- (e) A combination of federally designated areas.

(2) If a new practice location is planned, additional criteria apply.

New practice locations must:

- (a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;
- (b) Support a full-time physician practice;
- (c) Have written referral plans that describe how patients using the new primary care location will be connected to existing secondary and tertiary care if needed.

SECTION 12. That Section 39-6111, Idaho Code, be, and the same is hereby amended to read as follows:

39-6111. CRITERIA FOR THE J-1 PETITIONING PHYSICIAN. (1) The physician must not have a J-1 visa waiver pending for any other employment offer, and must provide a notarized statement testifying to this fact.

(2) The physician must have the qualifications described in recruitment efforts for a specific vacancy.

(3) Physicians must:

- (a) Provide direct patient care full time; and
- (b) Be trained in:
 - (i) Family medicine; ~~or~~
 - (ii) Internal medicine; ~~or~~
 - (iii) Pediatrics; ~~or~~
 - (iv) Obstetrics and gynecology; or
 - (v) Psychiatry and its subspecialties.

(4) Physicians must ~~have~~ apply and be eligible for an active Idaho medical license. The physician may be participating in an accredited residency program for this application, but must have successfully completed the third year of their residency training program for their employment contract to be activated. The physician must have an unrestricted license to practice in the state of Idaho and be board certified or eligible in his respective medical specialty at the commencement of employment. A copy of the ~~license acknowledgment of receipt form from the state board of medicine~~ must be included in the waiver request.

(5) Physicians must have at least one (1) recommendation from their residency program that:

- (a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income persons in the United States; and
- (b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and
- (c) Documents the level of specialty training, if any; and
- (d) Is prepared on residency program letterhead and is signed by residency program staff or faculty; and
- (e) Includes name, title, relationship to physician, address, and telephone number of signatory.

(6) The physician must agree with all provisions of the employment contract as described herein. Other negotiable terms of the contract are between the physician and the hiring agency.

(7) The physician must:

- (a) Agree to work full time for no less than three (3) years in an area of underservice in the state of Idaho; ~~and~~
- (b) Provide health care to medicare and medicaid beneficiaries; ~~and~~
- (c) Post and implement a sliding fee discount schedule; ~~and~~
- (d) Serve the low-income population; ~~and~~
- (e) Serve the uninsured population; and
- (f) Serve the shortage designation population; or
- (g) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.

SECTION 13. That Chapter 61, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-6111A, Idaho Code, and to read as follows:

39-6111A. CRITERIA FOR THE NATIONAL INTEREST WAIVER PETITIONING PHYSICIAN. The national interest waiver petitioning physician must:

- (1) (a) Provide direct patient care full time; and
- (b) Be trained in:
 - (i) Family medicine;
 - (ii) Internal medicine;
 - (iii) Pediatrics;
 - (iv) Obstetrics and gynecology; or
 - (v) Psychiatry and its subspecialties.
- (2) Apply and be eligible for an active Idaho medical license. The physician may be participating in an accredited residency program for this application, but must have successfully completed the third year of his residency training program for his employment contract to be activated. The physician must have an unrestricted license to practice in the state of Idaho and be board certified or eligible in his respective medical specialty at the commencement of employment. A copy of the acknowledgment of receipt form from the state board of medicine must be included in the waiver request.
- (3) Have at least one (1) recommendation from their residency program and one (1) from a previous employer, if applicable, that:
 - (a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income persons in the United States;
 - (b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities;
 - (c) Documents the level of specialty training, if any;
 - (d) Is prepared on residency program letterhead or the employer's business letterhead and is signed by residency program staff or faculty; and
 - (e) Includes name, title, relationship to physician, address and phone number of signatory.
- (4) Agree with all provisions of the employment contract as described in section 39-6109A, Idaho Code. Other negotiable terms of the contract are between the physician and the hiring agency.
- (5) (a) Agree to work full time for no less than five (5) years in an area of underservice in the state of Idaho unless the physician qualifies for the three (3) year service provision under the applicable national interest waiver rules and regulations or the physician is transferring from another area of underservice;
- (b) Provide health care to medicare and medicaid beneficiaries;
- (c) Post and implement a sliding fee discount schedule;
- (d) Serve the low-income population

- (e) Serve the uninsured population; and
- (f) Serve the shortage designation population; or
- (g) Serve the population of a local, state or federal governmental institution or corrections facility as an employee of the institution.

SECTION 14. That Section 39-6112, Idaho Code, be, and the same is hereby amended to read as follows:

39-6112. JOINT REPORTING REQUIREMENT UPON COMMENCEMENT OF PRACTICE. (1) Notification of waiver status and commencement of employment must be submitted to the department upon receipt of written notification of approval from the immigration agency. This notification must include the date the ~~three (3) year~~ medical service obligation commences, and a copy of the notification of approval from the immigration agency.

(2) The physician and the applicant must, on commencement of practice and annually thereafter or more frequently as determined by the department, and upon expiration of the ~~first three (3) years of the contract~~ physician's service obligation to the underserved area, verify the physician's practice site address and field of practice. Further, for population-designated health professional shortage areas, documentation that the population the physician was to serve was indeed served must be submitted. This will include the facility's payer mix, the number of patients seen by the physician, and the payer mix of those patients. When submitting the final report, the physician must indicate whether he intends to remain in the shortage area to practice.

(3) Sites receiving waiver approval must agree to report to the department on the status of the physician's activities at the beginning of the physician's employment and every year thereafter during the ~~three (3) to~~ five (5) year waiver medical service obligation period. Failure to provide these reports within thirty (30) days of the annual anniversary date of approval of the J-1 visa or national interest waiver in an accurate manner or failure to demonstrate good faith in utilizing a physician's services in accordance with these policies will jeopardize future eligibility for placements and will be cause for reporting and referral to the United States department of state and immigration agency. This referral could ultimately lead to deportation proceedings against the ~~J-1~~ physician.

(4) Any amendments made to the required elements of the employment contract during the ~~first three (3) years for primary care~~ physician's of contracted employment medical service obligation must be reported to the department for review. The department will complete review and provide notice of approval or declination of such amendments within thirty (30) calendar days of receipt.

SECTION 15. That Section 39-6113, Idaho Code, be, and the same is hereby amended to read as follows:

39-6113. APPLICATION FEE. At the time the application is submitted to the department, an administrative fee must be paid to the department by the applicant. The fee amount will be determined by the director of the department, will not be less than one thousand dollars (\$1,000) for a J-1 visa waiver request, and three hundred fifty dollars (\$350) for a national interest waiver request, and may be revised at the beginning of the state fiscal year by the director based on costs to administer the program. The fee is nonrefundable.

SECTION 16. That Section 39-6114, Idaho Code, be, and the same is hereby amended to read as follows:

39-6114. REQUIRED APPLICATION FORMS AND ACCOMPANYING DOCUMENTS FOR A J-1 VISA WAIVER REQUEST. (1) Applications for the ~~Idaho-conrad~~ J-1 visa waiver program must include, but not be limited to, the following:

- (a) Evidence the applicant has no other mechanism through another process or interested government agency to apply for a J-1 visa waiver for the physician;
- (b) Evidence of recruiting efforts over a minimum of six (6) months prior to when the physician applied for the vacancy; this must include regional and national print advertising stating the position available and the practice site location and at least six (6) certified letters to medical schools to advertise the vacancy. Copies of advertisements submitted must show the publication date. Advertisements run at the time of or after preparation of the employment contract are unusable. Online advertisements must show dates the advertisements were online. Contracts with recruitment firms are allowable as evidence in lieu of print advertisements or letters if the activities described in this section are provided under contract. Recruitment firm contracts must be included if applicable;
- (c) Evidence that the physician selected for the position visited the practice site;
- (d) A mailing list of physicians who applied for the position and the reason they were not selected;
- (e) Evidence that the applicant has been providing medical or mental health care in Idaho for at least twelve (12) months or meets the requirements for a new start as defined in this chapter. This includes, but may not be limited to, the Idaho taxpayer identification number, facility address, fax and telephone numbers, and staffing list;
- (f) A copy of an employment contract between the physician and the applicant for no less than three (3) years;
- (g) Evidence that the employment site is in a designated area of under-service;
- (h) The request must be submitted by the applicant or applicant's representative. The letter must be written on the applicant's letterhead stationery, which includes address, telephone and fax numbers, if any. Letters, contracts and forms must contain original signatures;
- (i) A copy of the sliding fee scale which the health care facility must agree to implement and post;
- (j) A copy of the physician's license to practice medicine in the state of Idaho, or proof of the physician's eligibility to apply for an Idaho license;
- (k) Legible copies of all IAP-66/DS 2019 forms (certificate of eligibility for exchange visitor status), covering every period the physician was in J-1 status, submitted in chronological order;
- (l) Legible copies (front and back) of all I-94 entry and departure cards for the physician and family members;
- (m) The physician's curriculum vitae;
- (n) A statement of "no objection from the government" of the physician's country of nationality, if applicable. The government of the country to which the physician is otherwise contractually obliged to return must furnish a letter to the director of the United States department of state with a statement in writing that there is no objection to such waiver in cases where the physician's medical education or training is funded by the government of the physician's home country. Whether or not there is foreign government funding can be determined from examining the physician's IAP-66 form. This letter must be in English and follow the procedures and format outlined in federal register volume 60, number 197, published October 12, 1995 (or subsequent revisions);

(o) Payment of the department's administrative application processing fee;

(p) Federal form G-28 or letterhead from the law office, if the physician is being represented by an attorney, with telephone and fax numbers, and a contact name and address;

(q) A copy of the United States department of state issued instruction sheet with case number.

(2) The state may require any other documentation or information for the support and approval process in the waiver application on the part of the physician or the applicant.

(3) These requirements are subject to change without notice.

(4) ~~Idaho~~ ~~conrad~~ J-1 visa waiver program application forms and instructions are available and may be requested from the department.

(5) The physician's case number must appear on each page. The case number is assigned by the United States department of state.

(6) All required information and documentation must be submitted in a single package with all documents presented per instructions that will be provided by the department upon request. One (1) single-sided, unbound original and one (1) single-sided, unbound copy must be included. Waiver requests that do not comply with these requirements and the instructions provided by the department will not be considered.

SECTION 17. That Chapter 61, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-6114A, Idaho Code, and to read as follows:

39-6114A. REQUIRED APPLICATION FORMS AND DOCUMENTS FOR A NATIONAL INTEREST WAIVER REQUEST. (1) Applications for the national interest waiver program must include, but not be limited to, the following:

(a) Evidence of recruiting efforts over a minimum of six (6) months prior to when the physician applied for the vacancy. This evidence must include regional and national print advertising stating the position available and the practice site location and at least six (6) certified letters to medical schools to advertise the vacancy. Copies of advertisements submitted must show the publication date. Advertisements run at the time of or after preparation of the employment contract are unusable. Online advertisements must show dates the advertisements were online. Contracts with recruitment firms are allowable as evidence in lieu of print advertisements or letters if the activities described in this paragraph are provided under contract. Recruitment firm contracts must be included, if applicable. The provision of evidence for recruitment efforts over a six (6) month period is not necessary for national interest waiver petitioning physicians who receive a J-1 visa waiver at the request of the state of Idaho;

(b) Evidence that the physician selected for the position visited the practice site;

(c) A mailing list of physicians who applied for the position and the reason they were not selected;

(d) Evidence that the applicant has been providing medical or mental health care in Idaho for at least twelve (12) months or meets the requirements for a new start as defined in section 39-6105, Idaho Code. This includes, but may not be limited to, the Idaho taxpayer identification number, facility address, fax and telephone numbers and staffing list;

(e) A copy of an employment contract between the physician and the applicant;

(f) Evidence that the employment site is in a federally determined area of underservice;

- (g) The request must be submitted by the applicant or applicant's representative. The letter must be written on the applicant's letterhead stationery, which includes address, telephone and fax numbers, if any. Letters, contracts and forms must contain original signatures;
- (h) A copy of the sliding fee scale which the health care facility must agree to implement and post;
- (i) A copy of the physician's license to practice medicine in the state of Idaho, or eligibility to apply for an Idaho license;
- (j) Legible copies of any DS 2019 forms (formerly IAP-66), and other United States immigration documentation attesting to the physician's current legal status and history of stay in the United States;
- (k) The physician's curriculum vitae; and
- (1) Payment of the department's administrative application processing fee.
- (2) The state of Idaho may require any other documentation or information for the support and approval process in the waiver application on the part of the physician or the applicant.
- (3) These requirements are subject to change without notice.

SECTION 18. That Section 39-6116, Idaho Code, be, and the same is hereby amended to read as follows:

39-6116. DEPARTMENT REVIEW AND ACTION. (1) The department will review applications for completeness in date order received.

(2) Applications submitted for physicians with language skills appropriate to the community they wish to serve will be given priority.

(3) Selection preference will be given to applications received from HPSAs having the greatest unmet need for primary care physicians.

(4) Applications must be mailed, sent by commercial carrier, or delivered in person. Applications may not be sent electronically. The department is not responsible for applications or related materials lost in the mail.

(5) The department may limit the time period during which applications may be submitted including refusing to process applications after the department has submitted requests for all applications allowed in a given federal fiscal year.

(6) In the event an applicant for a J-1 visa waiver or a national interest waiver submits an application to the department, the department will acknowledge receipt of the copy of the application within five (5) business days of receipt.

(7) The department will review applications within fifteen (15) working days of receipt of the application to determine if the application is complete, and provide a written explanation of missing items.

(8) An additional fee will not be charged for incomplete applications if the missing items are provided within thirty (30) calendar days of the date on the letter of explanation from the department. If new information is not received within this time frame, the application will be returned to the applicant. The application fee will not be returned.

(9) The department will return applications and application fees to applicants having had two (2) approved J-1 visa waiver requests in the current federal fiscal year for the shortage area, applications received that exceed the de-designation threshold limit, and applications received after thirty (30) placements have been recommended.

(10) The department will review complete applications against the criteria specified in this chapter.

(11) The department may:

- (a) Request additional clarifying information;
- (b) Verify information presented;
- (c) Investigate the financial status of the applicant;

(d) Request verification of the health care facility's payer mix for the previous twelve (12) to eighteen (18) months-; and

(e) Return the application as incomplete if the applicant does not supply the requested clarifying information in its entirety within thirty (30) days of request. The application fee is nonrefundable. Incomplete applications must be resubmitted with the application fee. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(12) The department may request the director of the United States department of state to recommend that the immigration agency grant the J-1 visa waiver.

(13) The department may provide a letter of attestation to the immigration agency that the physician's work in Idaho is in the public interest for a national interest waiver.

(14) The department will notify the applicant in writing of action taken by the department. If the decision is to decline the J-1 visa waiver or national interest waiver request, the department will provide an explanation of how the application failed to meet the stated criterion or criteria. The application fee is nonrefundable.

(145) The department may deny a J-1 visa waiver or national interest waiver request or, prior to United States department of state or immigration agency approval, may withdraw a J-1 visa waiver or national interest waiver recommendation for cause, which shall include the following:

- (a) The application is not consistent with state or federal criteria;
- (b) Fraud;
- (c) Misrepresentation;
- (d) False statements;
- (e) Misleading statements;
- (f) Evasion or suppression of material facts in the J-1 visa waiver or national interest waiver application or in any of its required documentation and supporting materials;
- (g) Incomplete or insufficient information;
- (h) Allowable number of recommendations for the area or year has been met.

(156) Applications denied may be resubmitted with concerns addressed, with the application fee. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(167) The department retains the authority to audit, monitor and conduct unannounced site visits.

SECTION 19. That Section 39-6117, Idaho Code, be, and the same is hereby amended to read as follows:

39-6117. ELIGIBILITY FOR FUTURE PARTICIPATION. Health care facilities may be denied future participation in the ~~Idaho Conrad~~ J-1 visa waiver program or national interest waiver program if:

(1) The required annual reports are not submitted in a complete and timely manner;

(2) A physician does not serve the designated shortage area or shortage population approved at the time of placement for the full three (3) to five (5) years of employment. This does not apply only if the approved site is in a designated health professional shortage area that loses its designation after the physician begins employment;

(3) A physician does not remain employed by the applicant for the full three (3) to five (5) years of employment;

(4) The applicant or physician is not in compliance with the terms defined in this chapter or any federal requirements.

CHAPTER 107
(S.B. No. 1078)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION; AMENDING SECTION 33-307, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE CORRECTION OR ALTERATION OF SCHOOL DISTRICT BOUNDARIES, TO AUTHORIZE THE STATE BOARD OF EDUCATION TO PROMULGATE CERTAIN RULES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-308, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SCHOOL DISTRICTS AND THE EXCISION AND ANNEXATION OF TERRITORY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-311, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF EDUCATION SHALL GIVE CERTAIN NOTICE RELATING TO PROPOSED CONSOLIDATION, TO PROVIDE FOR CERTAIN NOTIFICATION BY THE BOARD OF CANVASSERS UPON APPROVAL OF CONSOLIDATION AND CREATION OF A NEW SCHOOL DISTRICT AND TO PROVIDE THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL MAKE CERTAIN ORDERS; AMENDING SECTION 33-312, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DIVISION OF SCHOOL DISTRICTS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 33-407, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN SCHOOL ELECTIONS AND THE REVISION OF SCHOOL DISTRICT BOUNDARIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-307, Idaho Code, be, and the same is hereby amended to read as follows:

33-307. CORRECTING OR ALTERING SCHOOL DISTRICT BOUNDARIES. (1) Whenever the state board of education shall find that school district boundaries should be corrected or altered, because of error in the legal description of the boundaries of any school district, or for any other reason, including, but not limited to:

(a) ~~a~~Any part of the area of the state is not included within the area of a school district; ~~or~~

(b) ~~is~~ included in more than one (1) school district; ~~or~~

(c) ~~that any area of less than fifty (50) square miles in which no school is operated should be excised from the school district in which it lies and annexed to a contiguous school district when the interests of the school children residing in each of the affected districts of such areas will be served thereby,~~ The approval in any school election involving the excision and annexation of territory, or the consolidation of school districts, the division of a school district, or the lapse of a school district; then

~~the said state board of education~~ superintendent of public instruction shall make an appropriate order including an omitted area into any school district, or districts, or correcting or altering the boundaries of the districts, in such manner as, in ~~its~~ his judgment, is just and proper.

(2) A copy of any such order shall be sent by the state ~~board~~ department of education to the board of trustees of any school district affected by the order, ~~and to the board of county commissioners of any county in which any such district, or part thereof, shall lie~~ which shall notify the state tax commission and the county assessor and county recorder in accordance with the provisions of section 63-215, Idaho Code.

(3) Within thirty (30) days of receipt of the order, ~~the board of county commissioners~~ state tax commission and the county assessor shall correct or alter the legal description of the school district or districts, as the same may appear in ~~its~~ their respective records, ~~and immediately thereafter shall notify the state board of education that the county records have been corrected in accordance with the order of the said state board of education.~~

~~The state tax commission shall also be notified in accordance with the provisions of section 63-215, Idaho Code. The proposal shall become effective at the same time state tax commission shall notify the board of trustees of the affected school district and the state board department of education and the state tax commission have been notified by the county commissioners that the county records have been corrected as ordered effective upon such notification. In the case of either the consolidation or division of a school district, the proposal shall become effective the first day of July next following the date of the order.~~

(4) The state board of education may promulgate rules to govern the procedures for correcting or altering school district boundaries.

SECTION 2. That Section 33-308, Idaho Code, be, and the same is hereby amended to read as follows:

33-308. EXCISION AND ANNEXATION OF TERRITORY. (1) A board of trustees of any school district including a specially chartered school district, or one-fourth (1/4) or more of the school district electors, residing in an area of not more than fifty (50) square miles within which there is no schoolhouse or facility necessary for the operation of a school district, may petition in writing proposing the annexation of the area to another and contiguous school district.

(2) Such petition shall be in duplicate, one (1) copy of which shall be presented to the board of trustees of the district from which the area is proposed to be excised, and the other to the board of trustees of the district to which the area is proposed to be annexed. The petition shall contain:

- (a) The names and addresses of the petitioners;
- (b) A legal description of the area proposed to be excised from one (1) district and annexed to another contiguous district;
- (c) Maps showing the boundaries of the districts as they presently appear and as they would appear should the excision and annexation be approved;
- (d) The names of the school districts from and to which the area is proposed to be excised, and annexed;
- (e) A description of reasons for which the petition is being submitted; and
- (f) An estimate of the number of children residing in the area described in the petition.

(3) The board of trustees of each school district, no later than ten (10) days after its first regular meeting held subsequent to receipt of the petition, shall transmit the petition, with recommendations, to the state ~~board~~ department of education.

- (4) The state board of education shall approve the proposal provided:
 - (a) The excision and annexation is in the best interests of the children residing in the area described in the petition; and
 - (b) The excision of the territory, as proposed, would not leave a school district with a bonded debt in excess of the limit then prescribed by law.

If either condition is not met, the state board shall disapprove the proposal. The approval or disapproval shall be expressed in writing to the board of trustees of each school district named in the petition.

(5) If the state board of education shall approve the proposal, it shall be submitted to the school district electors residing in the area described in the petition, at an election held in the manner provided in chapter 4, title 33, Idaho Code. Such election shall be held within sixty (60) days after the state board approves the proposal.

(6) At the election there shall be submitted to the electors having the qualifications of electors in a school district bond election and residing in the area proposed to be annexed:

(a) The question of whether the area described in the petition shall be excised from school district no. () and annexed to contiguous school district no. (); and

(b) The question of assumption of the appropriate proportion of any bonded debt, and the interest thereon, of the proposed annexing school district.

(7) If a majority of the school district electors in the area described in the petition, voting in the election, shall vote in favor of the proposal to excise and annex the said area, and if in the area the electors voting on the question of the assumption of bonded debt and interest have approved such assumption by the proportion of votes cast as is required by section 3, article VIII, of the constitution of the state of Idaho, the proposal shall carry and be approved. Otherwise, it shall fail.

(8) If the proposal shall be approved by the electors in the manner prescribed, the board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such results. ~~The state board of education~~ superintendent of public instruction shall make an appropriate order for the boundaries of the affected school districts to be altered, and the legal descriptions of the school districts shall be ~~corrected~~ altered, as prescribed in section 33-307(2), Idaho Code.

SECTION 3. That Section 33-311, Idaho Code, be, and the same is hereby amended to read as follows:

33-311. PLAN OF CONSOLIDATION SUBMITTED TO ELECTORS. The state board of education may approve or disapprove any plan proposing consolidation, and if it approves the same ~~it~~ the department of education shall give notice thereof to the board of trustees of each school district proposing to consolidate and to the board of county commissioners in each county in which the proposed consolidated district would lie. Notice to the board of county commissioners shall include the legal description of the boundaries of the proposed consolidated district and a brief statement of the approved proposal, and shall be accompanied by a map of the proposed consolidated district.

Not more than ten (10) days after receiving the notice from the state ~~board~~ department of education, each board of county commissioners receiving such notice shall enter the order calling for an election on the question of approving or disapproving, and shall cause notice of such election to be posted and published. The notice shall be posted and published, the election shall be held and conducted and its results canvassed, in the manner and form of sections 33-401 through 33-406, Idaho Code.

If the qualified school electors of any one (1) district proposing to consolidate, and voting in the election, shall constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of such electors in such district, voting in the election, and a majority of such electors in each of the remaining districts, voting in the election, shall approve the proposed consolidation.

If the qualified school electors in no one (1) of the districts proposing to consolidate, and voting in the election, constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of all such electors in each district, voting in the election, shall approve the proposed consolidation.

In any plan of consolidation the existing bonded debt of any district or districts proposing to consolidate, shall not become the obligation of the proposed consolidated school district. The debt or debts shall remain an obligation of the property within the districts proposing the consolidation. Upon voter approval of the proposed consolidation, the districts

proposing to consolidate shall become subdistricts of the new district as if they had been created under the provisions of section 33-351, Idaho Code. The subdistricts shall be called bond redemption subdistricts. The powers and duties of such bond redemption subdistricts shall not include authority to incur new indebtedness within the subdistricts.

When a consolidation is approved, as hereinabove prescribed, a new school district is thereby created, ~~and the board of county commissioners of any county in which the consolidated district lies.~~ The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall enter its make an appropriate order showing the creation of the district, and a legal description of its boundaries, and the legal descriptions of the boundaries of the affected school districts as prescribed in section 33-308, Idaho Code.

SECTION 4. That Section 33-312, Idaho Code, be, and the same is hereby amended to read as follows:

33-312. DIVISION OF SCHOOL DISTRICT. A school district may be divided so as to form not more than two (2) districts each of which must have continuous boundaries, in the manner hereinafter provided, except that any district which operates and maintains a secondary school or schools shall not be divided unless the two (2) districts created out of the division shall each operate and maintain a secondary school or schools immediately following such division.

A proposal to divide a school district may be initiated by its board of trustees and submitted to the state ~~board~~ department of education. Such proposal shall contain all of the information required in a proposal to consolidate school districts as may be relevant to a proposal to divide a school district. It shall also show the manner in which it is proposed to divide or apportion the property and liabilities of the district, the names and numbers of the proposed new districts, and legal description of the proposed trustee zones.

Before submitting any proposal to divide a school district, the board of trustees shall hold a hearing or hearings on the proposal within the district. Notice of such hearing or hearings shall be posted by the clerk of the board of trustees in not less than three (3) public places within the district, one (1) of which places shall be at or near the main door of the administrative offices of the school district, for not less than ten (10) days before the date of such hearing or hearings.

The department of education shall present any such proposal to the state board of education, which may approve or disapprove any such the proposal submitted to it, and the department of education shall give notice thereof in the manner of a proposal to consolidate school districts; except, that the state board of education shall not approve any proposal which would result in a district to be created by the division having or assuming a bonded debt in an amount exceeding the limitations imposed by law, or which would leave the area of any city or village in more than one (1) school district.

If the state board of education shall approve the proposal to divide the district, notice of the election shall be published, the election shall be held and conducted, and the ballots shall be canvassed, according to the provisions of sections 33-401— through 33-406, Idaho Code. The division shall be approved only if a majority of all votes cast at said special election by the school district electors residing within the entire existing school district and voting in the election are in favor of the division of such district, and a majority of all votes cast at said special election by the qualified voters within that portion of the proposed new district having a minority of the number of qualified voters, such portion to be determined by the number of votes cast in each area which is a contemplated new district, are

in favor of the division of the district, and upon such approval two (2) new school districts shall be thereby created. The organization and division of all school districts which have divided since June 30, 1963, are hereby validated.

If the division be approved, as herein provided, ~~the board of canvassers shall thereupon notify the state board of education and the trustees of the district which has been divided. The state board shall give notice to the board of county commissioners of any county in which the newly created districts may lie~~ two (2) new school districts are thereby created. The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall make an appropriate order showing the creation of the districts and a legal description of the boundaries, and the legal descriptions of the affected school districts shall be altered, as prescribed in section 33-307, Idaho Code.

SECTION 5. That Section 33-407, Idaho Code, be, and the same is hereby amended to read as follows:

33-407. RETURN AND CANVASS OF ELECTIONS. In any school election involving the excision and annexation of territory, or the consolidation of school districts, or the division of a school district, the board of county commissioners of the county in which the election is held, or, in the case of a joint school district, the board of county commissioners of the home county of the school district, shall constitute the board of canvassers. In all other school elections, the board of trustees of each school district shall act as the board of canvassers.

Following the close of the polls at the time stated in the notice of election, each board of election shall open the ballot boxes and compute the results in public view. Any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. In the event of a bond election or any other election requiring more than a simple majority conducted by a school district, any qualified elector casting such ballot or part of a ballot shall be deemed not to have voted at or participated in such bond election and the ballot or part of a ballot shall not be counted in determining the number of qualified electors voting at or participating in such elections. Within not more than three (3) days thereafter each board of election shall make return to the chairman of the board of canvassers. Said return shall include the computation of the results of the election and all ballots cast at the election, both those counted and those rejected.

At its next meeting after receiving all returns from the board or boards of election, the board of trustees or the board of county commissioners, when acting as a board of canvassers shall canvass all returns of the election. The board of canvassers shall examine and make a statement of the total number of votes cast for all candidates or questions that shall have been voted upon at the election. The statement shall set forth the names of the candidates or questions for which the votes have been cast. It shall also include the total number of votes cast for each candidate and/or the total number of affirmative and negative votes cast for any question voted upon at the election. The board of trustees of the school district, when acting as a board of canvassers, shall enter the results of the election as reflected in such a statement in the minutes of the board of trustees.

The board of county commissioners, when acting as a board of canvassers, shall canvass the returns and shall ~~give notice of the result of the election as reflected in such statement to the board of trustees of any school district involved in the election. If the proposals have been approved by the majority or majorities required by law, the board of county commissioners shall thereupon enter its order showing the proposals as having been ap-~~

~~proved, and shall also give notice of such approval to the board of county commissioners of any other county in which shall lie any part of the territory of any school district affected by the result of the election. The board of county commissioners of each county shall thereupon make appropriate corrections in the legal descriptions of any school district boundaries, within its county whenever the result of the election requires such correction thereupon promptly notify the state department of education and the affected school districts of such results. Whenever the results require the alteration of school district boundaries, the superintendent of public instruction shall make an appropriate order for the boundaries of the affected school districts to be altered, and the legal descriptions of the school districts shall be altered, as prescribed in section 33-307, Idaho Code.~~

All returns of elections, including ballots cast thereat, shall be kept and retained by the clerk of the board of trustees, or by the clerk of the board of county commissioners, as the case may be, for not less than eight (8) months after the date of the election.

Approved April 3, 2009.

CHAPTER 108
(S.B. No. 1106)

AN ACT

RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE THAT A COURT MAY ORDER RESTITUTION IN CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8003, IDAHO CODE, TO PROVIDE THAT UPON CONVICTION FOR CERTAIN OFFENSES A COURT MAY ORDER RESTITUTION FOR CERTAIN COSTS INCURRED, TO PROVIDE FOR THE DISTRIBUTION OF THE RESTITUTION AND TO DEFINE A TERM; AMENDING SECTIONS 37-2732 AND 37-2735A, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 37-2744 AND 37-2807, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-2808, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 57-816, IDAHO CODE, TO EXPAND THE DRUG ENFORCEMENT DONATION FUND TO INCLUDE DRIVING WHILE UNDER THE INFLUENCE; AND AMENDING SECTIONS 63-3067A AND 63-3067B, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the

person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars (\$250) for refusing to take the test;

(b) His driver's license will be seized by the peace officer and a temporary permit will be issued; provided, however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations, and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(c) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(d) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years; and

(e) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) above:

(a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and his driver's license or permit shall be seized by the peace officer and forwarded to the court and a temporary permit shall be issued by the peace officer which allows him to operate a motor vehicle until the date of his hearing, if a hearing is requested, but in no event for more than thirty (30) days; provided, however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(b) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the seizure unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The court, in granting such an extension, may, for good cause shown, extend the defendant's temporary driving privileges for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty immediately and suspend all the defendant's driving privileges immediately for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights;

(c) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred fifty dollar (\$250) civil penalty and suspend the defendant's driving privileges for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years, during which time he shall have absolutely no driving privileges of any kind; and

(d) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional

tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained civil penalty or suspension of driving privileges under this section or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code; provided, that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;

(ii) Vehicular manslaughter as provided in subsections (3) (a), (b) and (c) of section 18-4006, Idaho Code;

(iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or

(iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings. The court may order restitution pursuant to the provisions of section 18-8003(2), Idaho Code.

(e) The withdrawal of the blood sample may be delayed or terminated if:

(i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or

(ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

SECTION 2. That Section 18-8003, Idaho Code, be, and the same is hereby amended to read as follows:

18-8003. PERSONS AUTHORIZED TO WITHDRAW BLOOD FOR THE PURPOSES OF DETERMINING CONTENT OF ALCOHOL OR OTHER INTOXICATING SUBSTANCES AND RESTITUTION ORDERS. (1) Only a licensed physician, qualified medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational institution or other medical personnel trained in a licensed hospital or educational institution to withdraw blood can, at the order or request of a peace officer, withdraw blood for the purpose of determining the content of alcohol, drugs or other intoxicating substances therein. This limitation shall not apply to the taking of a urine, saliva or breath specimen. For purposes of this section: (a) the term "qualified medical technologist" shall be deemed to mean a person who meets the standards of a "clinical laboratory technologist" as set forth by the then current rules and regulations of the social security administration of the United States department of health and human services pursuant to subpart M of part 405, chapter III, title 20, of the code of federal regulation; and (b) the terms "phlebotomist" and "other medical personnel" shall be deemed to mean persons who meet the standards for the withdrawing of blood as designated and qualified by the employing medical facility or other employing entity of those persons.

(2) Upon conviction for a felony or misdemeanor violation under this chapter, except pursuant to sections 18-8001 and 18-8007, Idaho Code, or upon conviction for vehicular manslaughter pursuant to section 18-4006(3) (b), Idaho Code, the court may order restitution for the reason-

able costs incurred by law enforcement agencies to withdraw blood samples, perform laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for testimony relating to the analysis in judicial proceedings, including travel costs associated with the testimony. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A "conviction" for purposes of this subsection means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

(3) The person tested may, at his own expense, have a person of his own choosing, who is authorized to make a test, administer an evidentiary test for alcohol concentration in addition to the one administered at the request of a peace officer.

SECTION 3. That Section 37-2732, Idaho Code, be, and the same is hereby amended to read as follows:

37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(A) a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, except as provided for in section 37-2732B(a) (3), Idaho Code, is guilty of a felony and upon conviction may be imprisoned for a term of years not to exceed life imprisonment, or fined not more than twenty-five thousand dollars (\$25,000), or both;

(B) any other controlled substance which is a nonnarcotic drug classified in schedule I, or a controlled substance classified in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars (\$15,000), or both;

(C) a substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars (\$10,000), or both;

(D) a substance classified in schedules V and VI, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars (\$5,000), or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(A) a counterfeit substance classified in schedule I which is a narcotic drug, or a counterfeit substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, fined not more than twenty-five thousand dollars (\$25,000), or both;

(B) any other counterfeit substance classified in schedule I which is a nonnarcotic drug contained in schedule I or a counterfeit substance contained in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars (\$15,000), or both;

(C) a counterfeit substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars (\$10,000), or both;

(D) a counterfeit substance classified in schedules V and VI or a noncontrolled counterfeit substance, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars (\$5,000), or both.

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

(1) Any person who violates this subsection and has in his possession a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than seven (7) years, or fined not more than fifteen thousand dollars (\$15,000), or both.

(2) Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars (\$5,000), or both.

(3) Any person who violates this subsection and has in his possession a controlled substance which is a nonnarcotic drug classified in schedule I except lysergic acid diethylamide, or a controlled substance classified in schedules III, IV, V and VI is guilty of a misdemeanor and upon conviction thereof may be imprisoned for not more than one (1) year, or fined not more than one thousand dollars (\$1,000), or both.

(d) It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) and not more than ninety (90) days in the county jail, or both.

(e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains tetrahydrocannabinol, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars (\$10,000), or both.

(f) If two (2) or more persons conspire to commit any offense defined in this act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

(g) (1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distribute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000) and not more than one (1) year in the county jail, or both.

(2) It is unlawful for any person to possess a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300) and not more than six (6) months in the county jail, or both.

(h) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale simulated controlled substances. Any person who violates this subsection is guilty of a misdemeanor and shall be punished in the same manner as prescribed in subsection (g) of this section.

(i) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in section 37-2701(z), Idaho Code, in the course of professional practice or research.

(j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

(k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

SECTION 4. That Section 37-2735A, Idaho Code, be, and the same is hereby amended to read as follows:

37-2735A. DRUG HOTLINE FEE. In addition to any other penalties, a person convicted of a violation of this chapter shall be subject to an additional fine of ten dollars (\$10.00) to be deposited in the drug and driving while under the influence enforcement donation fund, as set forth in section 57-816, Idaho Code, to be used for the purposes designated in that section.

SECTION 5. That Section 37-2744, Idaho Code, be, and the same is hereby amended to read as follows:

37-2744. FORFEITURES. (a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, possessed or held in violation of this act or with respect to which there has been any act by any person in violation of this act;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances or counterfeit substances in violation of this act;

- (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) hereof;
- (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of distribution or receipt of property described in paragraph (1) or (2) hereof, but:
- (A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;
- (B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a) (4) of this section;
- (C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the security interest was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged.
- (5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this act.
- (6) (A) All moneys, currency, negotiable instruments, securities or other items easily liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other property described in paragraphs (2) and (3) hereof, found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section or which has been used or intended for use in connection with the illegal manufacture, distribution, dispensing or possession of property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section;
- (B) Items described in paragraph (6) (A) above or other things of value furnished or intended to be furnished by any person in exchange for a contraband controlled substance in violation of this chapter, all proceeds, including items of property traceable to such an exchange, and all moneys or other things of value used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.
- (7) All drug paraphernalia as defined by section 37-2701, Idaho Code.
- (8) All simulated controlled substances, which are used or intended for use in violation of this chapter.
- (9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.
- (b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate's division thereof, having jurisdiction over the property. Seizure without process may be made if:
- (1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;

(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director, or appropriate prosecuting attorney, subject only to the orders and decrees of the district court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence.

(1) All property described in paragraphs (1), (7) and (8) of subsection (a) hereof shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

(2) When property described in paragraphs (2), (3), (4), (5) and (6) of subsection (a) hereof is seized pursuant to this section, forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such property is seized. The procedure governing such proceedings shall be the same as that prescribed for civil proceedings by the Idaho Rules of Civil Procedure. The court shall order the property forfeited to the director, or appropriate prosecuting attorney, if he determines that such property was used, or intended for use, in violation of this chapter, or, in the case of items described in paragraph (6)(A) of subsection (a), was found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section.

(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such conveyance is seized.

(A) Notice of forfeiture proceedings shall be given each owner or party in interest who has a right, title, or interest which in the case of a conveyance shall be determined by the record in the Idaho transportation department or a similar department of another state if the records are maintained in that state, by serving a copy of the complaint and summons according to one (1) of the following methods:

(I) Upon each owner or party in interest by mailing a copy of the complaint and summons by certified mail to the address as given upon the records of the appropriate department.

(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the ~~last-known~~ last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a verified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30) days therefrom; and the proceeding shall have priority over other civil cases.

(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a) (4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a) (4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor. The court may order payment of all costs incurred by the state or law enforcement agency as a result of such seizure.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated;

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mort-

gagee of the conveyance, if any, up to the value of his interest in the conveyance.

2. The balance, if any, in the following order:

A. To the director, or appropriate prosecuting attorney, for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public.

The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

(A) To the director, or prosecuting attorney on behalf of the county or city law enforcement agency, for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, maintenance, storage or transportation, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this act.

(C) The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local agency's drug enforcement donation fund.

(3) Take custody of the property and remove it for disposition in accordance with law; or

(f) (1) The director or any peace officer of this state seizing any of the property described in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency, or person having custody of the same to the director to be destroyed pursuant to paragraph (2) hereof. The property shall be accompanied with a written inventory on forms furnished by the director.

(2) All property described in paragraphs (1) and (2) of subsection (a) which is seized or surrendered under the provisions of this act may be destroyed after all legal actions have been exhausted. The destruction shall be done under the supervision of the supervisory drug analyst of the Idaho state police, a representative of the office of the director and a representative of the state board of pharmacy. An official record listing the property destroyed and the location of destruction shall be kept on file at the office of the director. Except, however, that the director of the Idaho state police or his designee may authorize the destruction of drug or nondrug evidence, or store those items at government expense when, in the opinion of the director or his designee, it is not reasonable to remove or transport such items from the location of the seizure for destruction. In such case, a representative sample will be removed and preserved for evidentiary purposes and, when practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the director or his designee who shall make a record of the destruction.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) hereof.

SECTION 6. That Section 37-2807, Idaho Code, be, and the same is hereby amended to read as follows:

37-2807. PERSONAL PROPERTY -- RIGHTS OF THIRD PARTIES. (1) Within five (5) days of any of the events specified in section 37-2806, Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any of such personal property according to one (1) of the following methods:

(a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail

to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained.

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement.

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the ~~last-known~~ last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 37-2801, Idaho Code.

(b) A co-owner, or claimant of any right, title, or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property.

2. The balance, if any, in the following order:

(A) To the attorney general or appropriate prosecuting attorney, for all expenditures made or incurred by them in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for wit-

nesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this chapter.

(C) The remainder, if any, to the director of the Idaho state police for credit to the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code, or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

3. Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

4. In any case, the attorney general, or appropriate prosecuting attorney, may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional sales vendor and thereby purchase the property for use to enforce this chapter.

SECTION 7. That Section 37-2808, Idaho Code, be, and the same is hereby amended to read as follows:

37-2808. REAL PROPERTY -- RIGHTS OF THIRD PARTIES. (1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 37-2804, Idaho Code. The request shall be served in the same manner as complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner, or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of section 37-2801, Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property.

(ii) The balance, if any, in the following order:

1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the director of the Idaho state police for credit to the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

SECTION 8. That Section 57-816, Idaho Code, be, and the same is hereby amended to read as follows:

57-816. DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONATION FUND. (1) There is hereby created in the state operating fund the drug and driving while under the influence enforcement donation fund. Moneys in the fund may be appropriated only for programs designed to control or eliminate illicit drug traffic or to enforce statutory provisions related to driving while under the influence, and for law enforcement functions associated with such control or enforcement.

(2) Separate and apart from any other moneys in the fund, moneys deposited in the fund pursuant to section 37-2735A, Idaho Code, shall be used exclusively to support a twenty-four (24) hour anonymous hotline and reward system, including any advertising for and about such system, for the reporting of drug violations.

SECTION 9. That Section 63-3067A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067A. DESIGNATION BY INDIVIDUALS -- TRUST ACCOUNTS. (1) Every individual who:

(a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) of this section; or

(b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

(a) The fish and game set-aside account created by section 36-111, Idaho Code;

(b) The Idaho ag in the classroom account created by section 57-815, Idaho Code;

(c) The drug and driving while under the influence enforcement donation ~~account~~ fund created by section 57-816, Idaho Code;

(d) The children's trust fund created by section 39-6007, Idaho Code;

(e) The special olympics Idaho fund created in section 57-823, Idaho Code;

(f) The Idaho guard and reserve family support fund created by section 57-820, Idaho Code; and

(g) The American red cross of greater Idaho fund created in section 57-821, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

SECTION 10. That Section 63-3067B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067B. DESIGNATION BY INDIVIDUALS -- TRUST ACCOUNTS. (1) Every resident individual who:

- (a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) below; or
- (b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

- (a) The fish and game set-aside account created in section 36-111, Idaho Code;
- (b) The Idaho ag in the classroom account created in section 57-815, Idaho Code;
- (c) The drug and driving while under the influence enforcement donation ~~account~~ fund created in section 57-816, Idaho Code;
- (d) The children's trust fund created in section 39-6007, Idaho Code;
- (e) The special olympics Idaho fund created in section 57-823, Idaho Code;
- (f) The Alzheimer's disease services account created in section 57-819, Idaho Code;
- (g) The community forestry trust account created in section 38-136, Idaho Code;
- (h) The American red cross of greater Idaho fund created in section 57-821, Idaho Code, which donation shall be ten dollars (\$10.00) if made; and
- (i) The veterans support fund created in section 65-209, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

Approved April 3, 2009.

CHAPTER 109
(S.B. No. 1117)

AN ACT

RELATING TO THE BOARD OF HEALTH AND WELFARE; AMENDING SECTION 56-1005, IDAHO CODE, TO REVISE THE FREQUENCY OF BOARD MEETINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 56-1005, Idaho Code, be, and the same is hereby amended to read as follows:

56-1005. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES. (1) The board of health and welfare shall consist of eleven (11) members, seven (7) members of which shall be appointed by the governor, with the advice and consent of the senate. The

members appointed by the governor may be removed by the governor for cause. Each member of the board appointed by the governor shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector. Not more than four (4) members of the board appointed by the governor shall be from any one (1) political party. Of the members of the board appointed by the governor, four (4) members shall be chosen with due regard to their knowledge and interest in health and social services, two (2) members shall be chosen based on their experience in business or finance, and one (1) member shall be selected as a representative of the public at large. The voting members shall be appointed to assure appropriate geographic representation of the state of Idaho. The other four (4) members of the board, who shall be nonvoting members, shall be:

- (a) The chairperson of the senate health and welfare committee, or the chair's designee;
- (b) The chairperson of the house of representatives health and welfare committee, or the chair's designee;
- (c) The director of the department of health and welfare, who shall serve as the board's secretary; and
- (d) A representative of the office of the governor, as designated by the governor.

(2) The members of the board of health and welfare appointed by the governor, serving on the effective date of this act shall continue in office as members of the board of health and welfare. All members of the board of health and welfare appointed by the governor shall serve four (4) year terms.

(3) The voting members of the board annually shall elect a chairman and a vice chairman, who shall be voting members of the board. The board shall hold meetings no less than once every ~~two (2) months~~ quarter. Special meetings of the board may be called by the chairman of the board, by a majority of the voting members of the board or, on written request, by the director of the department of health and welfare. A majority of the voting members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(p), Idaho Code.

(4) The board, in furtherance of its duties under law and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

(5) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

(6) Any person aggrieved by an action or inaction of the department of health and welfare shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

(7) Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.

(8) The board, by the affirmative vote of four (4) of its voting members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out its duties and responsibilities and to enforce the laws of this state.

The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the health of the state.

(9) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(10) In addition to any other powers and duties granted to the board under law, the board shall:

- (a) Advise the director and the governor on department fiscal, policy and administrative matters;
- (b) Review and advise the director regarding the department's strategic plan and performance measures;
- (c) Develop goals and standards to measure department efficiency and effectiveness; and
- (d) Review and advise the director and the governor on department initiatives.

(11) The board shall provide an annual report to the governor and to the legislature prior to the start of each legislative session, addressing:

- (a) The key department fiscal and policy issues;
- (b) The department's managerial and overall performance; and
- (c) The major proposed and ongoing departmental initiatives.

Approved April 3, 2009.

CHAPTER 110
(H.B. No. 65, As Amended)

AN ACT

RELATING TO FIREARMS; AMENDING SECTION 18-3314, IDAHO CODE, TO PROVIDE FOR THE OUT-OF-STATE PURCHASE OF FIREARMS BY RESIDENTS OF IDAHO, TO DELETE ARCHAIC VERBIAGE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 18-3315, IDAHO CODE, TO PROVIDE FOR THE PURCHASE OF FIREARMS IN IDAHO BY NONRESIDENTS, TO DELETE ARCHAIC VERBIAGE AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-3314, Idaho Code, be, and the same is hereby amended to read as follows:

18-3314. RESIDENT'S PURCHASE OF FIREARM ~~IN CONTIGUOUS~~ OUT-OF-STATE. Residents of the state of Idaho may purchase rifles and shotguns in a state ~~contiguous to other than~~ Idaho, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, and regulations thereunder, ~~as administered by the United States secretary of the treasury~~, and provided further, that such residents conform to the provisions of law applicable to such a purchase in Idaho and in the ~~contiguous~~ state in which the purchase is made.

SECTION 2. That Section 18-3315, Idaho Code, be, and the same is hereby amended to read as follows:

18-3315. ~~RESIDENT OF CONTIGUOUS STATE~~ NONRESIDENT -- PURCHASE OF FIREARM IN IDAHO. Residents of a state ~~contiguous to other than~~ the state of Idaho may purchase rifles and shotguns in Idaho, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, and regulations thereunder, ~~as administered by the United States secretary of the treasury~~, and provided further, that such residents conform to the provisions of law applicable to such purchase in Idaho and in the state in which such persons reside.

Approved April 8, 2009.

CHAPTER 111
(H.B. No. 110)

AN ACT

RELATING TO PLUMBING AND PLUMBERS; AMENDING SECTION 54-2614, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REGISTRATION AND FEES FOR APPRENTICES AND SPECIALTY APPRENTICES; AND AMENDING SECTION 54-2614A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REGISTRATION AND RENEWAL FOR APPRENTICES AND SPECIALTY APPRENTICES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2614, Idaho Code, be, and the same is hereby amended to read as follows:

54-2614. APPLICATION AND REGISTRATION FEES. All applicants shall pay to the board at the time of application for examination, a fee in accordance with the following:

Application for Plumbing Contractor \$22.50

Application for Plumbing Journeyman 22.50
 Application for Specialty Contractor 22.50
 Application for Specialty Journeyman 22.50

Apprentices and specialty apprentices shall not be required to be examined for competency, but shall register as an apprentice or a specialty apprentice with the board division of building safety and maintain such registration yearly during the entire period in which they are accruing their experience. The registration fee for apprentices ~~and specialty apprentices~~ shall be five fifty dollars (\$50.00) initial and five dollars (\$5.00) per year renewal. The registration fee for specialty apprentices shall be thirty dollars (\$30.00) per renewal. The board may contract with a professional testing service to administer any licensing examination and any contracted professional testing service shall be responsible to establish and collect the examination fee. Any person who fails to pass the examination may apply for reexamination at the next scheduled examination upon payment of the examination fee. Should any person fail to pass the examination the second time, the board may refuse to allow a subsequent examination until the expiration of one (1) year.

SECTION 2. That Section 54-2614A, Idaho Code, be, and the same is hereby amended to read as follows:

54-2614A. APPRENTICE AND SPECIALTY APPRENTICE REGISTRATION AND RENEWAL. Registration for an apprentice ~~or a specialty apprentice shall be valid for five (5) years and shall expire twelve (12) months from the date of issue on the last day of the month in which it is set to expire~~ unless renewed. Registration for a specialty apprentice shall be valid for three (3) years and shall expire on the last day of the month in which it is set to expire unless renewed. An apprentice registration or specialty apprentice registration may be renewed at any time during the month prior to its expiration. Failure of any apprentice to timely renew a registration shall cause a lapse of the registration, but it may be revived within one (1) year upon payment of the renewal fee.

Approved April 8, 2009.

CHAPTER 112
 (H.B. No. 111)

AN ACT

RELATING TO ELECTRICAL CONTRACTORS AND JOURNEYMEN; AMENDING SECTION 54-1007, IDAHO CODE, TO REVISE PROVISIONS RELATING TO EXAMINATION AND LICENSING REQUIREMENTS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-1008, IDAHO CODE, TO REVISE PROVISIONS RELATING TO LICENSING AND REGISTRATION PERIODS; AMENDING SECTION 54-1013, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REVIVAL OF AN EXPIRED LICENSE; AND AMENDING SECTION 54-1014, IDAHO CODE, TO REVISE CERTAIN FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1007, Idaho Code, be, and the same is hereby amended to read as follows:

54-1007. ISSUANCE OF LICENSES -- RECIPROCITY. (1) The administrator shall issue licenses to such persons as have by examination shown themselves to be fit, competent and qualified to engage in the trade of journeyman electrician, specialty electrician or master electrician as defined in section 54-1003A, Idaho Code, and to such persons, firms, partnerships, associations or corporations as have shown themselves to be fit, competent and qual-

ified to engage in the business of electrical contracting or specialty electrical contracting as defined in section 54-1003A, Idaho Code.

(2) An apprentice electrician, as defined in section 54-1003A, Idaho Code, may take the journeyman's examination if he has completed the required related instruction for electrical apprentices as approved by the Idaho state board for professional-technical education, completion of which shall be evidenced by a certificate from an approved provider, and has worked the number of hours as prescribed by the Idaho electrical board, provided that ~~for each such year all the time~~ he is claiming to have worked as an apprentice electrician, the apprentice shall have been registered with the division of building safety as an apprentice, ~~paid an apprentice registration fee, and submitted with his annual application for apprentice registration verification of employment, the number of instructional hours completed and the number of hours worked.~~ The electrical board may, by rule, fix the apprentice registration fee, in an amount not to exceed the costs of issuing apprentice registration certificates and enforcing the apprentice registration provisions of this ~~act~~ chapter, and may also by rule establish requirements relative to the manner of verification of employment, the number of instructional hours completed, continuation training and the number of hours worked.

(a) All verification of employment forms submitted by an apprentice shall be entered into and maintained in the apprentice's file by the division of building safety. The division of building safety shall provide the apprentice online access to this information.

(b) An apprentice who has completed the number of instructional hours and has not taken or passed the journeyman's examination within two (2) years of completion of the instructional training hours, shall provide proof of continuation training as set by rule of the electrical board.

~~(b)~~ (c) An apprentice who has not advanced in apprenticeship training for a period of two (2) years shall complete continuation training as set by rule of the electrical board.

(3) Any person who has worked as a licensed journeyman for a period of not less than four (4) years and who has worked the number of hours as prescribed by rule of the board as a licensed journeyman electrician shall be considered as qualified to apply for a master electrician's license in this state. The Idaho electrical board, in establishing by rule the requirements for a master electrician's license, shall also take into account the applicant's performance as a journeyman electrician.

(4) Any person with out-of-state experience who has worked as a journeyman electrician or as an apprentice electrician for a period of four (4) years, and who has met such other requirements as established by rule of the board, shall be considered as qualified to apply for a journeyman electrician's license in this state.

(5) To the extent that other states which provide for the licensing of electricians provide for similar action, the administrator, on the recommendation of the Idaho electrical board, may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this subsection are not required to take a written examination.

SECTION 2. That Section 54-1008, Idaho Code, be, and the same is hereby amended to read as follows:

54-1008. DURATION OF LICENSE. (1) All licenses, including license renewals, for master electricians, journeyman electricians and specialty journeyman electricians shall issue for a period of three (3) years, and

shall expire three (3) years from the date of issue unless renewed, revoked or suspended.

(2) Electrical contractor, ~~and specialty electrical contractor and apprentice/specialty trainee~~ licenses issued after July 1, 2002, shall issue for a period of one (1) year, and shall expire one (1) year from the date of issue unless renewed, revoked or suspended.

(3) Electrical apprentice registrations issued or renewed after July 1, 2009, shall be issued for a period of five (5) years.

(4) Electrical specialty trainee registrations issued or renewed after July 1, 2009, shall be issued for a period of three (3) years.

(5) Each licensing period and each registration period shall end at midnight on the last day of the month of the licensing or registration period. Licenses and registrations not renewed by this date shall have expired.

(46) The board shall promulgate rules to provide for a staggered system of issuing and renewing licenses.

SECTION 3. That Section 54-1013, Idaho Code, be, and the same is hereby amended to read as follows:

54-1013. RENEWAL OF LICENSES -- INACTIVE LICENSES. (1) A license once issued under this chapter, unless revoked or suspended as herein provided, may be renewed at any time during the final month of the licensing period on the payment of the renewal fee herein specified, proof of satisfaction of the continuing education requirements as established by the electrical board, and provided that all outstanding civil penalties, and permit or other fees, have been paid in full, and all outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(2) Any license which has expired may be revived at any time within one (1) year from the ~~first~~ last day of the final month of the licensing period, by payment of the revival fee herein specified, together with all outstanding civil penalties, and permit or other fees and penalties, and upon proof that outstanding correction notices have been satisfactorily resolved. For electrical contractors and specialty electrical contractors, proof of liability insurance in the amount of three hundred thousand dollars (\$300,000) shall also be required, and proof of worker's compensation insurance shall be required if applicable.

(3) Certificates of competency issued prior to July 1, 1961, shall, for the purpose of this chapter, be considered as licenses and may be renewed or revived as herein provided.

(4) The administrator may renew, on an inactive basis, the license of an electrical contractor or specialty contractor who is not engaged in electrical contracting in this state. The board shall fix and collect an inactive license fee for such an inactive license renewal in an amount not to exceed one hundred fifty dollars (\$150). Each inactive license shall be issued for a period of one (1) year. An electrical contractor or specialty contractor holding an inactive license may not engage in the practice of electrical contracting or specialty contracting in this state. If an electrical contractor or specialty contractor wishes to convert his inactive license to an active license, he may do so by paying a processing fee of thirty dollars (\$30.00) and providing proof of the required liability insurance and applicable worker's compensation insurance.

SECTION 4. That Section 54-1014, Idaho Code, be, and the same is hereby amended to read as follows:

54-1014. FEES. The administrator of the division of building safety shall charge the following fees:

- (1) Application for license \$ 15.00
- (2) One-year licenses:
 - (a) Electrical contractor license \$125.00
 - (b) Electrical contractor license renewal 100.00
 - (c) Electrical contractor license revival 125.00
 - (d) ~~Apprentice/specialty trainee registration and working license~~ ~~10.00~~
 - (~~e~~) Specialty contractor license 125.00
 - (~~f~~e) Specialty contractor license renewal 100.00
 - (~~g~~f) Specialty contractor license revival 125.00
- (3) Three-year licenses, in accordance with sections 54-1008 and

54-1013, Idaho Code:

- (a) Master electrician license \$65.00
- (b) Master electrician license renewal 45.00
- (c) Master electrician license revival 55.00
- (d) Journeyman electrician license 55.00
- (e) Journeyman electrician license renewal 45.00
- (f) Journeyman electrician license revival 55.00
- (g) Specialty journeyman electrician license 55.00
- (h) Specialty journeyman electrician license renewal 45.00
- (i) Specialty journeyman electrician license revival 55.00
- (j) Specialty trainee registration and working license 30.00

(i) At the time the specialty trainee applies for a specialty journeyman electrician license, the pro rata value of any remaining time on a specialty trainee working license shall be credited toward the purchase of the specialty journeyman electrician license.

(4) Five-year licenses, in accordance with sections 54-1008 and 54-1013, Idaho Code:

- (a) Apprentice electrician registration and working license \$50.00
 - (i) At the time the apprentice applies for a journeyman electrician license, the pro rata value of any remaining time on an apprentice electrician working license shall be credited toward the purchase of the journeyman electrician license.

Approved April 8, 2009.

CHAPTER 113
(H.B. No. 112)

AN ACT

RELATING TO INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS; AMENDING SECTION 54-5012, IDAHO CODE, TO REVISE THE REGISTRATION PERIOD AND THE REGISTRATION FEE FOR APPRENTICES AND SPECIALTY APPRENTICES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-5012, Idaho Code, be, and the same is hereby amended to read as follows:

54-5012. FEES FOR APPLICATION FOR EXAMINATION, CERTIFICATES OF COMPETENCY AND REGISTRATION OF APPRENTICES. (1) Application for examination.

- (a) HVAC contractor or specialty contractor \$35.00
- (b) HVAC journeyman or specialty journeyman \$35.00

(2) Certificate of competency, initial issue, valid for one (1) year; or may be issued at the annual rate for up to three (3) years.

(a) HVAC contractor or specialty contractor\$75.00

(b) HVAC journeyman or specialty journeyman\$50.00

(3) Renewal of certificate of competency, valid for one (1) year; or may be issued at the annual rate for up to three (3) years.

(a) HVAC contractor or specialty contractor\$50.00

(b) HVAC journeyman or specialty journeyman\$25.00

(4) Each apprentice and specialty apprentice is required to register annually with the division of building safety and maintain such registration during the entire period in which work experience is accrued. An apprentice registration shall be valid for five (5) years and shall expire on the last day of the month in which it is set to expire unless renewed. A specialty apprentice registration shall be valid for two (2) years and shall expire on the last day of the month in which it is set to expire unless renewed. The annual registration fee is fifteen for an apprentice shall be fifty dollars (\$150.00), and the registration fee for a specialty apprentice shall be twenty dollars (\$20.00).

Approved April 8, 2009.

CHAPTER 114
(H.B. No. 124)

AN ACT

RELATING TO IDAHO AG IN THE CLASSROOM; AMENDING SECTION 49-417B, IDAHO CODE, TO PROVIDE THAT THE IDAHO TRANSPORTATION DEPARTMENT SHALL TRANSFER CERTAIN MONEYS TO IDAHO AG IN THE CLASSROOM; AMENDING SECTION 57-815, IDAHO CODE, TO PROVIDE FOR THE USE OF MONEYS TRANSFERRED TO IDAHO AG IN THE CLASSROOM BY THE IDAHO TRANSPORTATION DEPARTMENT AND TO DELETE REFERENCE TO THE IDAHO AG IN THE CLASSROOM FUND; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-417B, Idaho Code, be, and the same is hereby amended to read as follows:

49-417B. IDAHO AGRICULTURE PLATES. (1) On and after January 1, 2000, any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for Idaho agriculture plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho agriculture plates for other vehicles may be authorized by rule of the board.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of thirty-five dollars (\$35.00) for the initial issuance of the plates, and twenty-five dollars (\$25.00) upon each succeeding annual registration. Ten dollars (\$10.00) of the initial fee and ten dollars (\$10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of the administration of this special license plate program. Twenty-five dollars (\$25.00) of each initial fee and fifteen dollars (\$15.00) of each renewal fee shall be transferred by warrant on a monthly basis by the state treasurer Idaho transportation department to the Idaho ag in the classroom account created by the provisions of section 57-815, Idaho Code.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer

fees. The owner may only display the plates after receipt of new registration from the department.

(4) The Idaho agriculture license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features Idaho agriculture shall be acceptable to the Food Producers of Idaho, Inc. and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid from the ag in the classroom account.

(5) Sample Idaho agriculture plates may be purchased from the department for a fee of thirty dollars (\$30.00), ten dollars (\$10.00) of which shall be deposited in the state highway account and twenty dollars (\$20.00) of which shall be transferred by warrant on a monthly basis by the Idaho transportation department to the Idaho ag in the classroom account.

SECTION 2. That Section 57-815, Idaho Code, be, and the same is hereby amended to read as follows:

57-815. IDAHO AG IN THE CLASSROOM — ~~IDAHO AG IN THE CLASSROOM FUND~~. (1) There is hereby created an independent body corporate and politic to be known as Idaho ag in the classroom for the purpose of developing and presenting through the joint efforts of the United States department of agriculture, the state department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide, an educational program that will provide students in kindergarten through grade twelve (12) with a better understanding of the crucial role of agriculture in all aspects of society and of how Idaho agriculture relates to the rest of the world.

(2) ~~There is hereby created in the state treasury the Idaho ag in the classroom fund. Moneys in the fund transferred by the Idaho transportation department to Idaho ag in the classroom pursuant to section 49-417B, Idaho Code, shall be used by Idaho ag in the classroom for the purpose of developing and presenting educational programs pursuant to subsection (1) of this section and all moneys so deposited transferred are hereby continuously appropriated for this purpose. The state treasurer shall invest the idle moneys in the fund, and the interest earned on such investments shall be paid to the fund.~~ The right is reserved to the state of Idaho to audit the funds of Idaho ag in the classroom at any time.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 8, 2009.

CHAPTER 115
(H.B. No. 164)

AN ACT

RELATING TO PEACE OFFICER STANDARDS AND TRAINING COUNCIL; AMENDING SECTION 19-5109, IDAHO CODE, TO EXTEND THE COUNCIL'S DUTIES TO INCLUDE THE MAINTENANCE OF THE LAW ENFORCEMENT EMPLOYMENT HISTORY BY AGENCY AND DATES OF SERVICE OF PEACE OFFICERS AND TO PROVIDE THAT CERTAIN PERMANENT FILES AND TRANSCRIPTS SHALL BE MADE AVAILABLE TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST WHEN A PERSON APPLIES FOR EMPLOYMENT AT THE REQUESTING AGENCY; AND AMENDING SECTION 19-5117, IDAHO CODE, TO EXTEND THE COUNCIL'S DUTIES TO INCLUDE THE MAINTENANCE OF CERTAIN FILES AND TRANSCRIPTS OF COUNTY DETENTION OFFICERS AND TO PROVIDE THAT CERTAIN

PERMANENT FILES AND TRANSCRIPTS SHALL BE MADE AVAILABLE TO ANY LAW ENFORCEMENT AGENCY UPON REQUEST WHEN A PERSON APPLIES FOR EMPLOYMENT AT THE REQUESTING AGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-5109, Idaho Code, be, and the same is hereby amended to read as follows:

19-5109. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF PEACE OFFICERS -- CERTIFICATION -- PENALTIES. (1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed. One (1) component of minimum basic training shall be a course in the investigation of and collection of evidence in cases involving an allegation of sexual assault or battery.

(b) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.

(c) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

(d) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.

(e) To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the scholastic requirement, experience and training of instructors at all approved schools.

(f) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.

(g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.

(h) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.

(i) To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such peace officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

(j) To allow a peace officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said peace officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal peace officer shall receive a certificate of satisfactorily completing the academy.

(2) After January 1, 1974, any peace officer as defined in section 19-5101(d), Idaho Code, employed after January 1, 1974, except any elected official or deputy serving civil process, the deputy director of the Idaho

state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the Idaho state police, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(3) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council shall decertify any officer who is convicted of any felony or offense which would be a felony if committed in this state. The council may decertify any officer who:

- (a) Is convicted of any misdemeanor;
- (b) Willfully or otherwise falsifies or omits any information to obtain any certified status; or
- (c) Violates any of the standards of conduct as established by the council's code of ethics, as adopted and amended by the council.

All proceedings taken by the council shall be conducted in accordance with chapter 52, title 67, Idaho Code.

(4) Any law enforcement agency as defined in section 19-5101(c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action, shall, within fifteen (15) days of such action, make a report to the council.

(5) The council shall, pursuant to the requirements of this section, establish minimum basic training and certification standards for county detention officers that can be completed within one (1) year of employment as a county detention officer.

(6) The council may, upon recommendation of the juvenile training council and pursuant to the requirements of this section, implement minimum basic training and certification standards for juvenile detention officers, juvenile probation officers, and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles.

(7) The council may, upon recommendation of the correction standards and training council, and pursuant to the requirements of this section, establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers.

(8) The council may, upon recommendation of a probation training advisory committee and pursuant to the requirements of this section, establish minimum basic training and certification standards for misdemeanor probation officers.

(9) The council may reject any applicant for certification who has been convicted of a misdemeanor, and the council shall reject an applicant for certification who has been convicted of a felony, the punishment for which could have been imprisonment in a federal or state penal institution.

(10) As used in this section, "convicted" means a plea or finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred or withheld,

and regardless of whether the plea or conviction is set aside or withdrawn or the case is dismissed or reduced under section 19-2604, Idaho Code, or any other comparable statute or procedure where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt or conviction.

SECTION 2. That Section 19-5117, Idaho Code, be, and the same is hereby amended to read as follows:

19-5117. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF COUNTY DETENTION OFFICERS -- CERTIFICATION -- PENALTIES. (1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which county detention officers shall complete in order to be eligible for permanent employment as a county detention officer;

(b) To establish such basic training and certification so that it can be completed within one (1) year of employment as a county detention officer;

(c) To establish the requirements of minimum training standards for employment as a county detention officer in probationary, temporary, part-time and/or emergency situations;

(d) To certify county detention officers as having completed all requirements established by the council in order to be eligible for permanent employment as a county detention officer;

(e) To receive applications for financial assistance from counties and disburse available state funds to the counties for salaries and allowable living expenses or any part thereof, incurred while in attendance at approved training programs and schools, as authorized by the council. The annual reimbursement authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code;

(f) To maintain permanent files and transcripts for all county detention officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such county detention officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

(2) Any county detention officer employed after July 1, 1997, shall be trained and certified within one (1) year of employment. Current county detention officers, who were employed prior to July 1, 1997, shall comply with the training and certification provisions of this section by July 1, 1999.

Approved April 8, 2009.

CHAPTER 116
(S.B. No. 1003)

AN ACT

RELATING TO SEXUAL CONTACT WITH A PRISONER; AMENDING SECTION 18-6110, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-6110, Idaho Code, be, and the same is hereby amended to read as follows:

18-6110. SEXUAL CONTACT WITH A PRISONER. (1) It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender, as those terms are defined in section 18-101A, Idaho Code.

(2) It is a felony for any supervising officer, as that term is defined in section 18-101A, Idaho Code, to knowingly have sexual contact with any parolee or probationer, as those terms are defined in section 18-101A, Idaho Code, who is not the person's spouse.

(3) For the purposes of this section "sexual contact" means sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact or oral-anal contact, between persons of the same or opposite sex.

(4) Any person found guilty of sexual contact with a prisoner or juvenile offender is punishable by imprisonment in the state prison for a term not to exceed life.

Approved April 8, 2009.

CHAPTER 117
(S.B. No. 1008)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-401, IDAHO CODE, TO PROVIDE THAT SPECIFIED MILITARY VETERANS SHALL NOT BE REQUIRED TO PROCURE CERTAIN LICENSES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 36-408, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF FREE PERMITS AND TAGS TO SPECIFIED MILITARY VETERANS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-401, Idaho Code, be, and the same is hereby amended to read as follows:

36-401. HUNTING, TRAPPING, FISHING -- LICENSE REQUIREMENT -- EXCEPTIONS. No person shall hunt, trap, or fish for or take any wild animal, bird or fish of this state, without first having procured a license as hereinafter provided. Provided that no license shall be required:

(a) 1. For children under the age of fourteen (14) years who are residents of this state to fish during the open season therefor.

2. For nonresident children under the age of fourteen (14) years to fish during the open season therefor provided they are accompanied by the holder of a valid fishing license, and provided further that any fish caught by such nonresident children shall be included in the bag and possession limit of such license holder.

3. For resident children under the age of twelve (12) years to hunt, take or kill predatory, unprotected birds and animals by means other than with firearms.

4. For resident children under the age of fourteen (14) years to trap muskrats from irrigation ditches or property on which they live during the open season.

5. For children under the age of eighteen (18) years who are residents of a licensed foster home or a children's residential care facility to fish during the open season therefor, provided they are accompanied and supervised by the director, officer, or other employee of the facility where the child resides.

6. For children with life-threatening medical conditions participating in a hunt in association with a qualified organization as provided in section 36-408(6), Idaho Code.

7. For military veterans with disabilities participating in a hunt in association with a qualified organization as provided in section 36-408(7), Idaho Code.

(b) For any person to fish on a "free fishing day" as may be designated by the commission.

(c) State Long-term Care Facility Residents. For any resident of a state long-term-care care facility to fish during open seasons, provided said state long-term care facility has a permit therefor from the director. The director is authorized to issue such permits upon the request of the head of the respective state long-term care facility having custody of said resident upon a showing that the state long-term care facility recommends the issuance of such permit and will assume full responsibility for and control over any resident while using said permit. For purposes of this subsection only, "state long-term care facility" shall mean the state hospital north, state hospital south, Idaho state school and hospital, and state veterans homes, and "resident" shall mean any individual residing and receiving treatment services at a state long-term care facility.

(d) State Juvenile Corrections Center Students. For students of the state juvenile corrections center, under the supervision of an officer of the center, to fish during the open season.

(e) Boy Scouts. For boy scouts who are official participants in attendance at national or international encampments at Farragut State Park to take fish during the encampment period from Lake Pend Oreille in such areas and such numbers as may be designated by the commission.

(f) Participants in Fish and Game Sponsored Functions. For persons who are official participants in attendance at official department sponsored functions including clinics, courses or other educational events, while under the supervision of a department approved instructor for the function, to fish during any open season, provided that the instructor has been issued an educational fishing permit by the director.

(g) Nothing contained herein shall be construed to prohibit citizens of the United States who are residents of the state of Idaho from carrying arms for the protection of life and property.

SECTION 2. That Section 36-408, Idaho Code, be, and the same is hereby amended to read as follows:

36-408. COMMISSION'S AUTHORITY -- TAGS -- PERMITS -- NONRESIDENTS LIMITED -- OUTFITTERS SET-ASIDE. (1) Tags and Permits -- Method of Use. The commission is hereby authorized to prescribe the number and kind of wildlife that may be taken under authority of the several types of tags and permits provided for in this title, and the manner in which said tags and permits shall be used and validated.

(2) Limit -- Licenses, Tags or Permits -- Controlled Hunts. The commission is hereby authorized to establish a limit annually as to the number of each kind and class of licenses, tags, or permits to be sold or issued and is further authorized to limit the number or prohibit entirely, the participation by nonresidents in controlled hunts.

(3) Outfitters Set-aside. When the commission establishes a limit as to the number of nonresident deer tags and nonresident elk tags, it shall set aside annually a maximum of twenty-five percent (25%) of the nonresident deer tag and nonresident elk tag limit. The set-aside tags shall be sold pursuant to commission rule, only to persons that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

In order for a person to purchase any set-aside nonresident deer tag or nonresident elk tag, that person's outfitter must submit an application with the proper fees as required by the director. If any nonresident deer tags or nonresident elk tags set aside pursuant to this subsection are unsold by July 1 of the year in which they were set aside, they may be sold by the department to the general public who are nonresidents. The commission may promulgate all necessary rules to implement the provisions of this subsection.

(4) Deer and Elk Tag Allocation. If the commission limits the number of deer or elk tags available for use in any game management area, unit or zone, the commission may allocate by rule a number of deer or elk tags for use by hunters that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

(5) Special Game Tags. The commission is hereby authorized to issue two (2) special bighorn sheep tags per year.

(a) Auction bighorn sheep tag. One (1) special bighorn sheep tag shall be auctioned off by an incorporated nonprofit organization dedicated to wildlife conservation, selected by the commission. The tag shall be issued by the department of fish and game to the highest eligible bidder. No more than five percent (5%) of all proceeds for the tag may be retained by the organization. The tag to be issued pursuant to this subsection shall be taken from the nonresident bighorn sheep tag quota. The net proceeds shall be forwarded to the director for deposit in the fish and game expendable trust account and shall be used for bighorn sheep research and management purposes. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake River and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep. No transplants of bighorn sheep accomplished with moneys raised pursuant to this subsection shall occur in any area until hearings are conducted in the area.

(b) Lottery bighorn sheep tag. The commission is also authorized to issue one (1) special bighorn sheep tag which will be disposed of by lottery. The lottery permit can be marketed by the department of fish and game or a nonprofit organization dedicated to wildlife conservation selected by the commission. The tag will be issued by the department of fish and game to an eligible person drawn from the lottery provided in this subsection. No more than twenty-five percent (25%) of gross revenue can be retained for administrative costs by the organization. All net proceeds for the tag disposed of by lottery pursuant to this subsection shall be remitted to the department and deposited in the fish and game expendable trust account. Moneys in the account from the lottery bighorn sheep tag shall be utilized by the department in solving problems between bighorn sheep and domestic sheep, solving problems between wildlife and domestic animals or improving relationships between sportsmen and private landowners by being utilized in the veterinarian program established in subsection (e)9. of section 36-106, Idaho Code.

(6) Issuance of free permit or tag to minor children with life-threatening medical conditions. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to minor children who have life-threatening medical conditions that have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection (6). For purposes of this subsection (6) a "qualified organization" means a nonprofit organization that is qualified under section 501(c) (3) of the Internal Revenue Code and that affords opportunities and experiences to minor children with life-threatening medical conditions.

(7) Issuance of free permit or tag to military veterans with disabilities. Notwithstanding any other provision of law, the commission

may issue free big game permits or tags to disabled military veterans who have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection (7). For purposes of this subsection (7), a "qualified organization" means a governmental agency that assists veterans or a nonprofit organization that is qualified under section 501(c)(3) of the Internal Revenue Code and that affords opportunities, experiences and assistance to disabled veterans.

(8) Special Wolf Tags. The commission is hereby authorized to issue up to ten (10) special auction or lottery tags for hunting wolves. Special wolf tags will be auctioned off or made available through lottery by incorporated nonprofit organizations dedicated to wildlife conservation and selected by the director. No more than five percent (5%) of all proceeds for each tag may be retained by the nonprofit organization for administrative costs involved. Each wolf tag shall be issued by the department of fish and game and awarded to the highest eligible bidder or winner of a lottery. Each tag will be good for the harvest of one (1) wolf pursuant to commission rule. The proceeds from each tag will be sent to the director to be placed in the department general license fund.

Approved April 8, 2009.

CHAPTER 118
(S.B. No. 1115)

AN ACT

RELATING TO OPTOMETRISTS; AMENDING SECTION 54-1501, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1502, IDAHO CODE, TO PROVIDE FOR PENALTIES AND TO PROVIDE THAT AN OPTICIAN LAWFULLY PRACTICING OPTICIANRY WITHIN THE STATE IS NOT IN VIOLATION OF THE PROVISIONS OF THE CHAPTER; AMENDING CHAPTER 15, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1502A, IDAHO CODE, TO PROVIDE PENALTIES AND REMEDIES REGARDING NONLICENSED PERSONS; AMENDING SECTION 54-1503, IDAHO CODE, TO REMOVE OUTDATED LANGUAGE, TO PROVIDE QUALIFICATIONS FOR MEMBERS OF THE STATE BOARD OF OPTOMETRY AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-1505, IDAHO CODE, REGARDING QUALIFICATIONS FOR MEMBERS OF THE STATE BOARD OF OPTOMETRY; AMENDING SECTION 54-1509, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE BOARD, TO REMOVE A POWER AND DUTY OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1510, IDAHO CODE, TO REVISE A GROUND FOR LICENSE DISCIPLINE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1514, IDAHO CODE, TO REMOVE CERTAIN PRINTING AND DISTRIBUTION REQUIREMENTS AND TO PROVIDE FOR AN AVAILABILITY REQUIREMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1501, Idaho Code, be, and the same is hereby amended to read as follows:

54-1501. PRACTICE OF OPTOMETRY DEFINED. Optometry is defined as the science which relates to the examination, diagnosis and treatment of conditions of or relating to the eyes and/or eyelids, the analysis of their function and the employment of preventive or corrective measures to ~~insure~~ ensure maximum vision and comfort. The practice of optometry is declared to be a learned profession. The practice of optometry affects the public health, welfare and safety and the public interest requires regulation and control of the practice of optometry and limitation of the practice to qualified persons. The "practice of optometry" means:

(1-) To engage in the profession of examining, testing, measuring, treating, correcting, developing, or improving the human visual apparatus;

(2-) To display any sign, circular, advertisement, or device offering to examine eyes, test eyes, fit glasses, adjust frames or prescribe lenses, or by any means or method set oneself forth as an optometrist, doctor of optometry, optometric physician, optical doctor, doctor of optical science, O.D., Opt. D., optician, optical specialist, eye specialist, or refractionist, or any other designation of like import;

(3-) To employ in the examination, diagnosis, or treatment of another, any means, including the use of diagnostic pharmaceutical agents and pharmaceutical agents for therapeutic use, for the measurement, improvement, or development of any or all functions of human vision or the assistance of the powers of range of human vision or the determination of the accommodative or refractive status of human vision or the scope of its functions in general. The state board of optometry may, pursuant to rules adopted by it, issue a certificate to optometrists licensed in this state authorizing the optometrist to prescribe, administer and dispense such therapeutic pharmaceutical agents for the treatment of conditions of the eye and/or eyelid, as approved by the board of optometry and as identified in rules adopted by the board of optometry. Such certificate shall only be issued to an optometrist who:

(a) ~~h~~Has successfully passed the "treatment and management of ocular disease" section of the optometrist examination approved by the international association of boards of examiners in optometry, inc. or an equivalent examination as may be approved by the state board of optometry;

(b) ~~is~~ Is the holder of a certificate for the use of diagnostic pharmaceutical agents issued by the state board of optometry; and

(c) ~~h~~Has completed such appropriate additional educational and clinical experience requirements as shall be established by the state board of optometry pursuant to section 54-1509, Idaho Code;

(4-) To remove superficial foreign bodies and to diagnose and treat superficial conditions of the eye and eyelid. The practice of optometry shall not include the use of therapeutic lasers;

(5-) To sell or offer for sale, otherwise than on prescription, any lens with spherical, prismatic or cylindrical power ~~for the aid of human vision,~~ including plano or cosmetic contact lenses;

(6-) To prescribe or adapt lenses, including contact lenses, exercises, orthoptics, vision therapy, or other physical means to correct defects or adjust human vision to the conditions of a special occupation; or

(7-) To do or offer to do any of the foregoing with intent of receiving therefor, either directly or indirectly, any fee, gift, remuneration, or compensation whatsoever.

SECTION 2. That Section 54-1502, Idaho Code, be, and the same is hereby amended to read as follows:

54-1502. LICENSE A PREREQUISITE TO PRACTICE. (1) It is unlawful for any person to practice optometry unless he shall obtain a license to do so as provided in this chapter.

(2) Any person who shall practice or attempt to practice optometry, as defined in this chapter, without having at the time of so doing a valid license to practice optometry issued by the state board of optometry shall be deemed guilty of a misdemeanor. Any person licensed under another chapter of Idaho Code to perform these functions shall be exempt from the provisions of this chapter. An optician lawfully practicing opticianry within the state of Idaho is not in violation of the provisions of this chapter.

(3) It is a misdemeanor for an optometrist to knowingly aid or abet any person or entity to practice optometry if such person or entity is not authorized by Idaho Code to practice according to the provisions of this chapter.

SECTION 3. That Chapter 15, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1502A, Idaho Code, and to read as follows:

54-1502A. NONLICENSED PERSONS -- PENALTIES AND REMEDIES. (1) The board may investigate any person engaged in the practice of optometry within the state of Idaho or any person believed to have acted as an optometrist without being duly licensed as required by this chapter. Upon receipt of a written complaint, the board shall perform an investigation of the facts alleged. If the board investigation reveals that the facts alleged or received are sufficient to proceed with formal action, the board may authorize the filing of an administrative complaint against the person and may seek injunctive relief prohibiting such person from engaging in the practice of optometry. In addition or alternatively, the board may refer violators of the provisions of this chapter for prosecution pursuant to section 54-1513, Idaho Code.

(2) Each violation of the provisions of section 54-1502, Idaho Code, shall, upon conviction, result in a fine in an amount not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail for not less than thirty (30) days but not more than ninety (90) days, or by both such fine and imprisonment and, in addition, shall require the payment of the cost and fees incurred in the investigation and prosecution of the violation.

SECTION 4. That Section 54-1503, Idaho Code, be, and the same is hereby amended to read as follows:

54-1503. STATE BOARD OF OPTOMETRY ESTABLISHED -- QUALIFICATIONS. (1) There is hereby established in the department of self-governing agencies a state board of optometry composed of five (5) members who will serve for staggered terms of five (5) years each after the effective date of this act unless otherwise provided in this act chapter. ~~Sixty (60) days after the effective date of this act, the bureau of occupational licenses shall send the governor of the state of Idaho a list of ten (10) names of persons eligible to serve on the state board of optometry in the state of Idaho, nominated pursuant to the terms of this act, and the governor of the state of Idaho shall then appoint the five (5) members of the board of optometry from the list of names provided for terms of one (1), two (2), three (3), four (4) and five (5) years from the effective date of this act.~~ A vacancy in membership on the board shall occur when the regular term of a member expires or when a member dies, resigns or is removed from office by the governor. Appointments to fill a vacancy because of the expiration of a regular term provided in this act chapter shall be filled by the governor by appointment of a member for a five (5) year term as provided in this act chapter. Appointments to fill a vacancy occurring for some reason other than expiration of a term of office shall be made for the unexpired term which is being filled. The governor may remove any member of the board from membership on the board who is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act, or who ceases to have the qualifications of a member as provided in this act chapter.

(2) Each member of the state board of optometry shall be a licensed optometrist in the state of Idaho and shall have been a resident of and lawfully practicing optometry within the state of Idaho for a period of not less than five (5) years immediately preceding his appointment.

SECTION 5. That Section 54-1505, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 54-1509, Idaho Code, be, and the same is hereby amended to read as follows:

54-1509. STATE BOARD OF OPTOMETRY -- POWERS AND DUTIES. In order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility and further safeguard the doctor-patient relationship, the state board of optometry shall have the following powers and duties:

(1-) To make and prescribe rules for a fair and wholly impartial method of examination of candidates to practice optometry.

(2-) To make and prescribe rules defining for the optometrists what shall constitute a school, college or university or department of a university or other institution reputable and in good standing and to determine the reputability and good standing of a school, college or university or department of a university or other institution by reference to a compliance with such rules.

(3-) To make and prescribe rules to establish a standard of preliminary education deemed requisite to admission to a school, college or university and to require satisfactory proof of the enforcement of such standards by schools, colleges and universities.

(4-) To make and prescribe rules governing the relicensing of persons applying for a license to practice optometry in the state of Idaho after a failure to maintain a license for a period in excess of five (5) years.

(5-) To establish by rule the qualifications necessary to grant a license to practice optometry in Idaho by endorsement to persons licensed in other states or foreign countries.

(6-) To conduct examinations to ascertain the qualifications and fitness of applicants to practice optometry or to recognize by rule a national testing agency for the administration and grading of such test.

(7-) To make and prescribe rules governing the minimum amount and kind of continuing education in optometry to be required annually of each optometrist seeking ~~relicense~~ to renew his license to practice optometry in the state of Idaho.

(8-) To make, prescribe and promulgate rules prescribing a code of ethics and standards of professional conduct in practice for the purpose of regulating and governing the practice of optometry by licensed optometrists within the state of Idaho and to change and modify its rules or prescribe new rules in order to improve the practice of optometry for the benefit of the people of the state of Idaho.

~~(9-) To make, prescribe and promulgate rules governing the listing and identification of charges for materials and for professional services provided to members of the public by persons licensed to practice optometry in Idaho.~~

~~10- To make, prescribe and promulgate rules regarding the establishment of "branch offices" in the state of Idaho by persons licensed to practice optometry.~~

(10) To make, prescribe and promulgate rules regarding advertising by optometrists licensed to practice in Idaho.

~~(121-) To make, prescribe and promulgate rules defining "gross incompetence" as grounds for suspension or revocation of an optometrist's license as provided in section 54-1510, Idaho Code.~~

~~(132-) To make, prescribe and promulgate rules governing the verification by an optometrist of the accuracy in compounding and the quality of the workmanship and materials used by any person, firm or corporation in the course of filling or compounding the optometrist's prescriptions for vision aids of any type prior to delivery by the optometrist.~~

~~(143-)~~ To make, prescribe and promulgate rules governing the issuance and release of prescriptions or copies of prescriptions by optometrists out of the office of the optometrist.

~~(154-)~~ To make, prescribe and promulgate rules governing the type and kind of records to be kept by each optometrist pertaining to all patients examined or for whom he has adapted optical accessories.

~~(165-)~~ To make, prescribe and promulgate such other rules required by this ~~act~~ chapter or necessary or desirable for its enforcement and administration.

~~(176-)~~ The state board of optometry shall have the power to administer oaths, take depositions of witnesses in and out of the state of Idaho in the manner of civil cases, require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing before it or deposition authorized by it, pertaining in any manner to any matters of which it has authority to investigate and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a civil case is returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in civil cases. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which the proceeding is held upon application of the board, to compel obedience in proceedings for contempt as in the case of disobedience of the requirements of any subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceeding shall have the same right of subpoena upon making application to the board as set out in this ~~act~~ chapter.

~~(187-)~~ The state board of optometry shall have the power to hire attorneys, investigators, hearing officers or other employees for carrying out the purpose of this ~~act~~ chapter or to promote the interests of the profession of optometry in Idaho ~~from funds available in the fund established by this act or from any other available funds~~.

~~(198-)~~ To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

SECTION 7. That Section 54-1510, Idaho Code, be, and the same is hereby amended to read as follows:

54-1510. REVOCATION OF LICENSES -- GROUNDS. Every license issued under the provisions of this chapter shall be subject to suspension, revocation or other discipline upon any of the following grounds pursuant to the procedures set forth in chapter 52, title 67, Idaho Code. All hearings conducted pursuant to this section, whether before the board or a hearing officer, shall be held in Ada county unless otherwise designated by the board.

~~(1-)~~ Fraud or deception in procuring license.

~~(2-)~~ Practicing optometry under a false or assumed name or as a representative or agent of any person, firm or corporation other than another licensed optometrist, a physician licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code, or a professional service corporation, which has been incorporated under the authority of chapter 13, title 30, Idaho Code, by persons licensed to practice optometry under chapter 15, title 54, Idaho Code, or licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code.

(3-) Having been convicted or having received a withheld judgment or suspended sentence in this or any other state of a felony, a crime involving moral turpitude, or any act related to the qualifications, functions or duties of an optometrist.

(4-) Gross incompetency.

(5-) Inability to practice optometry with reasonable skill and safety by reason of:

(a) Mental illness; ~~or~~

(b) Physical illness including, but not limited to, physical deterioration which adversely affects cognitive, motor or perceptive skills; ~~or~~

(c) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or any other substances which impair ability; or

(d) Having a communicable, contagious or infectious disease which endangers the health of patients.

(6-) Failure to pay to the board or the bureau of occupational licenses the annual fee and to secure a renewal license, whereupon after twenty (20) days' notice by registered mail the license of such delinquent may be revoked; but the payment of such fee at or before the time of hearing, with such additional sum, not exceeding twenty-five dollars (\$25.00) as may be fixed by the board of optometry, shall excuse the default.

(7-) Any practice or behavior of a character likely to deceive or defraud the public.

(8-) Obtaining of any fee or compensation by fraud, deceit or misrepresentation.

(9-) Employing, either directly or indirectly, any suspended or unlicensed optometrist to do optometric work.

(10-) Advertising the practice of optometry in a false, misleading or deceptive manner.

(11-) Employment or use of what are known as "cappers" or "steerers."

(12-) Consistently accepting referrals that violate the laws of the state of Idaho.

(13-) For ~~wilfully~~ willfully permitting or allowing or causing a person who is not a licensed optometrist or a licensed physician or surgeon to use the optometrist's prescription or optometric finding to fit contact lenses upon a person or member of the public, ~~or supply contact lenses directly to a member of the public.~~

(14-) For violation of any of the provisions of this ~~act~~ chapter or the rules or code of ethics made and promulgated by the state board of optometry, as authorized in section 54-1509, Idaho Code.

(15-) For ~~wilfully~~ willfully attempting to violate, directly or indirectly, conspiring to violate, or assisting or participating in or abetting the violation of any of the provisions of this ~~act~~ chapter or the rules or code of ethics made, prescribed or promulgated by the state board of optometry pursuant to the authority granted in this ~~act~~ chapter.

(16-) Having engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient.

(17-) Having committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude.

SECTION 8. That Section 54-1514, Idaho Code, be, and the same is hereby amended to read as follows:

54-1514. PUBLICATION OF ~~PAMPHLET CONTAINING~~ DIRECTORY AND LAW. The bureau of occupational licenses shall each year ~~print a pamphlet containing~~ make available the names and addresses of all licensed optometrists of the state of Idaho and ~~a copy of this chapter and other~~ the laws applicable to the

practice of optometry ~~and shall distribute a copy of such pamphlet to each licensed optometrist.~~

Approved April 8, 2009.

CHAPTER 119
(S.B. No. 1127)

AN ACT

RELATING TO THE IDAHO RURAL HEALTH CARE ACCESS PROGRAM; AMENDING SECTION 39-5903, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 39-5905, IDAHO CODE, TO REVISE AN UNUSED GRANT FUND RETURN DATE; AND AMENDING SECTION 39-5909, IDAHO CODE, TO REVISE THE GRANT PROCESS SCHEDULE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-5903, Idaho Code, be, and the same is hereby amended to read as follows:

39-5903. DEFINITIONS. As used in this chapter:

(1) "Applicant" means an entity submitting documents required by the rural health care access program for the purpose of requesting a grant from the rural health care access fund.

(2) "Application period" means the time period from ~~January~~ July 15 to ~~April 15 prior to~~ August 30 of the state fiscal year for which funding is requested.

(3) "Approval" means written notification that the application will be awarded funding through the rural health care access fund.

(4) "Board" means the health care access program review board.

(5) "Department" means the department of health and welfare.

(6) "Director" means the director of the department of health and welfare.

(7) "Grant period" means the time immediately following the application period from July 1 through June 30 (state fiscal year) for which funding is granted.

(8) "Nurse practitioner" means a health care provider licensed pursuant to chapter 14, title 54, Idaho Code.

(9) "Oral health care provider" means a dentist or dental hygienist licensed pursuant to chapter 9, title 54, Idaho Code.

(10) "Physician assistant" means a health care provider licensed pursuant to chapter 18, title 54, Idaho Code.

(11) "Primary care" means the provision of professional comprehensive health services, including oral health care services, that includes health education and disease prevention, initial assessment of health problems, treatment of acute care and chronic health problems, and the overall management of an individual's or family's health care services as provided by an Idaho licensed internist, obstetrician, gynecologist, pediatrician, family practitioner, general practitioner, dentist, dental hygienist, nurse practitioner or physician assistant. It provides the initial contact for health services and referral for secondary and tertiary care.

(12) "Primary care health professional shortage area" means a geographic area or population group which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(13) "Medically underserved area" means a geographic area which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(14) "Rural health care access grant" means a grant awarded pursuant to this chapter.

(15) "Rural health care access program" means the program that administers the rural health care access fund.

SECTION 2. That Section 39-5905, Idaho Code, be, and the same is hereby amended to read as follows:

39-5905. SCOPE OF GRANT SUPPORT. The board may award grants, in accordance with the procedures and criteria in this chapter, to governmental and nonprofit entities for the purpose of improving access to primary health care services to rural and underserved areas.

(1) Individual grant awards will be limited to a total of thirty-five thousand dollars (\$35,000), direct and indirect costs, per year.

(2) Applicants may propose projects for funding for up to three (3) years.

(a) Continued funding for projects beyond the first grant year, years two (2) and three (3), shall be subject to the appropriation of funds and grantee performance.

(b) No project may be funded for more than a total of three (3) years.

(c) Any unused grant funds shall be returned to the rural health care access fund by the applicant no later than ~~June~~ August 130 of the grant period.

(3) No funds awarded under a grant may be used for purchase, construction, renovation or improvement of real property or for projects which are solely or predominantly designed for the purchase of equipment. Use of funds for the purchase of equipment may be allowed when such equipment is an essential component of a program. However, the purchase of equipment may not represent more than forty percent (40%) of the total annual share of a proposal. Indirect costs shall not exceed fifteen percent (15%) of the total project.

SECTION 3. That Section 39-5909, Idaho Code, be, and the same is hereby amended to read as follows:

39-5909. GRANT AWARD SCHEDULE. The board shall conduct the grant process in accordance with the following schedule:

(1) The rural health care access director will generate, and make available, a list of areas eligible for potential grant assistance no later than ~~November~~ May 15 prior to the application period.

(2) The rural health care access director shall develop an application form and make guidance available no later than ~~January~~ July 15 which shall initiate the application period prior to the grant period.

(3) The completed application shall be submitted no later than ~~April 15~~ August 30 of the application period.

(4) The board shall issue notification to every applicant regarding the disposition of their grant request by ~~June 15~~ October 30 prior to the grant period.

(5) Funds for approved grants shall be disbursed during ~~July~~ November of that grant period or over the course of the current grant year as funds become available.

Approved April 8, 2009.

CHAPTER 120
(S.B. No. 1128)

AN ACT

RELATING TO THE STATE TAX COMMISSION; AMENDING SECTION 63-103, IDAHO CODE, TO PROVIDE PROVISIONS FOR SETTLEMENT AGREEMENTS; AMENDING SECTION 63-3047, IDAHO CODE, TO PROVIDE PROCEDURES WHEN A COMPROMISE OR SETTLEMENT AGREEMENT OCCURS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 63-3048, IDAHO CODE, TO PROVIDE PROCEDURES WHEN THE TAX LIABILITY OF A TAXPAYER IS EQUAL TO OR EXCEEDS FIFTY THOUSAND DOLLARS AND A SETTLEMENT AGREEMENT OR CLOSING AGREEMENT OCCURS AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-103, Idaho Code, be, and the same is hereby amended to read as follows:

63-103. EMPLOYEES -- COMPENSATION -- EXPENSES. (1) The state tax commission may employ an officer who shall serve as secretary of the commission and shall also employ such other persons as may be necessary for the performance of its duties. Certain of its employees may be designated as deputies who shall perform such duties as prescribed by the state tax commission. The state tax commission may delegate to any of its employees the duty of assisting in the collection, audit, inspection and enforcement of any tax or license and may authorize any of its employees to act in its place and stead. The state tax commission may delegate any other function, responsibility or duty imposed upon the commission to one (1) or more commissioners or deputy commissioners; provided however, where the amount in issue relating to the tax liability of any taxpayer is equal to or exceeds fifty thousand dollars (\$50,000), and the commission has delegated the authority to compromise such liability to an individual commissioner, the compromise settlement or closing agreement procedure shall be executed by at least one (1) commissioner in addition to the delegated commissioner. The commission shall adopt guidelines to govern review of compromise agreements. The state tax commission may employ counsel, or may retain counsel governed by the provisions of section 63-3048, Idaho Code.

(2) The compensation of all state tax commission employees shall be paid upon the same basis and in the same manner as the compensation of other state employees is paid.

(3) The traveling expenses of the members of the state tax commission and its employees when traveling in performance of official duty, and other necessary expenses incurred in performance of its duties, shall be paid upon the same basis and in the same manner as the expenses of other state employees are paid.

SECTION 2. That Section 63-3047, Idaho Code, be, and the same is hereby amended to read as follows:

63-3047. COMPROMISED CASES. The state tax commission or its delegate may compromise any penalty taxes, penalties or interest arising under the provisions of this act chapter instead of commencing suit thereon and may compromise settle any such case with the consent of the attorney general after suit thereon has been commenced. ~~Where any penalty case is compromised the state tax commission shall keep on file in its office reasons for the settlement of any case by compromise.~~

SECTION 3. That Section 63-3048, Idaho Code, be, and the same is hereby amended to read as follows:

63-3048. ADJUSTED OR COMPROMISED CASES -- SETTLEMENT AND CLOSING AGREEMENTS. (a) The state tax commission or its delegate is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person for whom he is acting, in respect of any tax under this ~~act~~ chapter for any taxable period ending prior to the date of the agreement.

(b) Where the amount in issue relating to the tax liability of any taxpayer is equal to or exceeds fifty thousand dollars (\$50,000) and the commission has delegated the authority to enter into a settlement or closing agreement for such liability to an individual commissioner, the following minimum standards of procedure shall apply:

(1) In addition to the individual commissioner delegated the principal responsibility to negotiate on behalf of the commission, a second commissioner shall be present for a final review of the negotiated settlement or closing agreement. Both commissioners shall be required to sign the settlement or closing agreement to make it binding and complete.

(2) In addition to the two (2) commissioners present at the final review, a representative of the office of the attorney general shall be present as well as tax commission staff, which shall include a tax policy specialist and either a representative from the audit division or other division where the case originated.

(3) The tax policy specialist or deputy attorney general assigned to a settlement or closing agreement shall prepare and submit to the commission a written summary for the final review explaining the terms of the settlement or closing agreement. The summary shall include any recommendations of agency staff including audit staff.

(4) The tax commission shall retain a copy of all settlement and closing agreements and, in addition, all summaries prepared pursuant to subsection (b) (3) of this section.

(c) The tax commission shall submit an annual report to the governor and the legislature by March 1 of each year summarizing all settlement and closing agreements entered into during the previous calendar year as defined by subsection (b) of this section.

(d) The tax commission shall promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this section.

(e) Such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of the state.

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

Approved April 8, 2009.

CHAPTER 121
(S.B. No. 1050)

AN ACT

RELATING TO ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS; AMENDING SECTION 11-603, IDAHO CODE, TO PROVIDE AN EXEMPTION FOR MEDICAL SAVINGS ACCOUNTS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 11-603, Idaho Code, be, and the same is hereby amended to read as follows:

11-603. PROPERTY EXEMPT WITHOUT LIMITATION. An individual is entitled to exemption of the following property:

- (1) ~~a~~A burial plot for the individual and his family;
- (2) ~~h~~Health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) ~~b~~Benefits the individual is entitled to receive under federal social security, or veteran's benefits, except the restrictions under this subsection shall not apply to enforcement of an order for the support of any person by execution, garnishment, or wage withholding under chapter 12, title 7, Idaho Code;
- (4) ~~b~~Benefits the individual is entitled to receive under federal, state, or local public assistance legislation;
- (5) ~~b~~Benefits payable for medical, surgical, or hospital care and the amount in a medical savings account as that term is defined in section 63-3022K, Idaho Code;
- (6) ~~s~~State unemployment compensation to the extent provided for in section 72-1375, Idaho Code.

Approved April 8, 2009.

CHAPTER 122
(S.B. No. 1065)

AN ACT

RELATING TO REGIONAL MENTAL HEALTH BOARDS; AMENDING SECTION 39-3130, IDAHO CODE, TO REVISE THE MEMBERSHIP OF THE BOARDS AND TO PROVIDE FOR PARENT MEMBER SELECTION PROCESS; AND AMENDING SECTION 39-3132, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE BOARDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3130, Idaho Code, be, and the same is hereby amended to read as follows:

39-3130. REGIONAL MENTAL HEALTH BOARD -- MEMBERS. A regional mental health board for each region consisting of ~~fourteen~~ seventeen (147) members is hereby created and shall be appointed as provided herein. Members shall be qualified electors and shall represent the following: three (3) county commissioners; two (2) department of health and welfare employees who represent the mental health system within the region; ~~a representative of the children's mental health regional council who is not an employee of the department of health and welfare~~ two (2) parents of children with a serious emotional disturbance, as defined in section 16-2403, Idaho Code, provided each parent's respective child is no older than twenty-one (21) years of age at the time of appointment; a law enforcement officer; three (3) adult mental health services consumer representatives, advocates or family members; a provider of mental health services within the region; a representative of the elementary or secondary public education system within the region; a representative of the juvenile justice system within the region; a physician or other licensed health practitioner from within the region; a representative of a hospital within the region; and a member of the regional advisory substance abuse authority. The consumer, parent and family representatives shall be selected from nominations submitted by mental health consumer and advocacy organizations. The board shall meet

at least twice each year, and shall annually elect a chairperson and other officers as it deems appropriate.

The appointing authority in each region shall be a committee composed of the chairperson of the board of county commissioners of each of the counties within the region, the regional mental health program manager for the department of health and welfare and the regional director for the department of health and welfare. The committee shall meet annually or as needed to fill vacancies on the board. The list of appointments shall be submitted to the department of health and welfare.

Members of the regional mental health advisory board who are serving on the effective date of this act may continue to serve until the end of the current term of their appointment. Appointments made after the effective date of this act shall be made in a manner to achieve the representation provided in this section as soon as reasonably practical.

SECTION 2. That Section 39-3132, Idaho Code, be, and the same is hereby amended to read as follows:

39-3132. POWERS AND DUTIES. The regional mental health board:

(1) Shall advise the state mental health authority through the state planning council on local mental health needs within the region;

(2) Shall assist in the formulation of an operating policy for the regional service;

(3) Shall interpret the regional mental health services to the citizens and agencies of the region;

(4) Shall advise the state mental health authority and the state planning council of the progress, problems and proposed projects of the regional service;

(5) Shall collaborate with the regional advisory substance abuse authorities ~~and the regional children's mental health councils~~ to develop appropriate joint programs;

(6) Shall promote improvements in the delivery of mental health services and coordinate and exchange information regarding mental health programs in the region;

(7) Shall identify gaps in available services including, but not limited to, services listed in sections 16-2402(3) and 39-3128, Idaho Code, and recommend service enhancements that address identified needs for consideration to the state mental health authority;

(8) Shall assist the state planning council on mental health with planning for service system improvement. The state planning council shall incorporate the recommendation to the regional mental health boards into the annual report provided to the governor by June 30 of each year. This report shall also be provided to the legislature; and

(9) May develop, or obtain proposals for, a service plan component for consideration by the state mental health authority.

Approved April 8, 2009.

CHAPTER 123
(S.B. No. 1071, As Amended)

AN ACT

RELATING TO DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-103, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR SHALL ADMINISTER A RANGE PROGRAM AND TO PROVIDE FOR THE PURPOSE OF THE PROGRAM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-103, Idaho Code, be, and the same is hereby amended to read as follows:

22-103. DUTIES OF DIRECTOR. The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

(1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products.

(12) Maintain a market news service, including information concerning crops, freight rates, commission rates and such other information as may be of service to producers and consumers, and to act as a clearinghouse for information between producers and consumers.

(13) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.

(14) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(15) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with

any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(16) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(17) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products. The director is authorized to regulate, as deemed necessary, commercial livestock truck washing facilities. This includes permitting for the treatment or disposal, at any location, of any wash water generated by the facility. This subsection preempts Idaho department of environmental quality's authority to issue land application permits and to do plan and specification reviews under section 39-118, Idaho Code, for livestock truck wash facilities, but does not affect any other authority of the Idaho department of environmental quality.

(18) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(19) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(20) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(21) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(22) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection (22), the director shall prescribe and promulgate rules pursuant to chapter 52, title 67, Idaho Code.

(23) Prescribe by rule an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve percent (12%) per annum.

(24) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(25) Administer a range program to provide support, coordination and expertise to Idaho rangeland livestock producers and land and wildlife management agencies for the planning and management of vegetation, grazing permits and other rangeland resources that are of importance to the livestock industry. The program shall also provide technical expertise and support to state and industry entities in reviewing various federal environ-

mental impact statements, federal environmental assessments and other state and federal proposals that impact grazing, vegetation management or other rangeland resources or uses important to the livestock industry.

(26) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection (256) with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

(267) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

(278) Cooperate with producers, industry and technology groups, and other agencies to encourage the growth of technology within the state's agricultural industries while protecting, as necessary, the integrity of existing agriculture and agricultural marketing channels.

Approved April 8, 2009.

CHAPTER 124

(H.B. No. 106, As Amended)

AN ACT

RELATING TO JUDGMENT; AMENDING SECTION 19-2522, IDAHO CODE, TO PROVIDE THAT IF A MENTAL HEALTH EXAMINATION OF THE DEFENDANT HAS PREVIOUSLY BEEN CONDUCTED PURSUANT TO SECTION 19-2524, IDAHO CODE, AND THE COURT DETERMINES THAT SUCH EXAMINATION AND REPORT PROVIDE CERTAIN NECESSARY INFORMATION, THEN THE COURT NEED NOT ORDER AN ADDITIONAL EXAMINATION OF THE DEFENDANT'S MENTAL CONDITION AT SENTENCING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2522, Idaho Code, be, and the same is hereby amended to read as follows:

19-2522. EXAMINATION OF DEFENDANT FOR EVIDENCE OF MENTAL CONDITION -- APPOINTMENT OF PSYCHIATRISTS OR LICENSED PSYCHOLOGISTS -- HOSPITALIZATION -- REPORTS. (1) If there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the court shall appoint at least one (1) psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code. The order appointing or requesting the designation of a psychiatrist or licensed psychologist shall specify the issues to be resolved for which the examiner is appointed or designated.

(2) In making such examination, any method may be employed which is accepted by the examiner's profession for the examination of those alleged to be suffering from a mental illness or defect.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis, evaluation or prognosis of the mental condition of the defendant;

(c) An analysis of the degree of the defendant's illness or defect and level of functional impairment;

(d) A consideration of whether treatment is available for the defendant's mental condition;

(e) An analysis of the relative risks and benefits of treatment or non-treatment;

(f) A consideration of the risk of danger which the defendant may create for the public if at large.

(4) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(5) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(6) If a mental health examination of the defendant has previously been conducted pursuant to section 19-2524, Idaho Code, and a report of such examination has been submitted to the court, and if the court determines that such examination and report provide the necessary information required by this section, including all of the information specified in subsection (3) of this section, then the court may consider such examination and report as the examination and report required by this section and need not order an additional examination of the defendant's mental condition.

(7) Nothing in this section is intended to limit the consideration of other evidence relevant to the imposition of sentence.

Approved April 8, 2009.

CHAPTER 125
(H.B. No. 108)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-2103, IDAHO CODE, TO REVISE WHO SHALL BE PERMITTED TO REMAIN ON CERTAIN POLICIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 41-2210, 41-3216 AND 41-3436, IDAHO CODE, TO REVISE WHO SHALL BE PERMITTED TO REMAIN ON CERTAIN CONTRACTS; AMENDING SECTION 41-3923, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS BE PERMITTED TO REMAIN ON CERTAIN CONTRACTS; AMENDING SECTIONS 41-4023 AND 41-4124, IDAHO CODE, TO REVISE WHO SHALL BE PERMITTED TO REMAIN ON CERTAIN CONTRACTS; AMENDING SECTION 41-4703, IDAHO CODE, TO REVISE WHO SHALL BE PERMITTED TO REMAIN ON CERTAIN PLANS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTIONS 41-5203 AND 41-5501, IDAHO CODE, TO REVISE WHO SHALL BE PERMITTED TO REMAIN ON CERTAIN PLANS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-2103, Idaho Code, be, and the same is hereby amended to read as follows:

41-2103. SCOPE AND FORMAT OF POLICY. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein;

(2) The time when the insurance takes effect and terminates shall be expressed therein;

(3) It shall purport to insure only one (1) person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the ~~policy holder~~ pol-

icyholder, any two (2) or more eligible members of that family, including husband, wife and any other dependent or dependents. As used in this subsection (3) and for all new and renewing policies, "dependent" includes an unmarried child ~~under the age of twenty one (21) years, an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent, and or an unmarried child of any age who is medically certified as disabled and dependent upon the parent;

(4) The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred ~~and~~ twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(5) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 41-2105 ~~to~~ through 41-2127, ~~inclusive, of this chapter Idaho Code~~, shall be printed, at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "exceptions," or "exceptions and reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or ~~by-laws~~ bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the director;

(8) When the policy provides payment for medical or surgical expense to the insured, on a reimbursement basis, or otherwise, the insured shall be entitled to a free choice of medical doctor to perform said services, or the free choice of a podiatrist if the latter is authorized by law to perform the particular medical or surgical services covered under the terms of said policy; and

(9) When the policy provides for payment for the expense of services that are within the lawful scope of practice of a duly licensed optometrist, on a reimbursement basis or otherwise, the insured shall be entitled to a free choice of medical doctor or optometrist to perform such services.

SECTION 2. That Section 41-2210, Idaho Code, be, and the same is hereby amended to read as follows:

41-2210. REQUIRED PROVISION IN GROUP AND BLANKET POLICIES. (1) Any group disability insurance contract or blanket disability insurance contract, delivered or issued for delivery in this state which provides coverage for injury or sickness for newborn dependent children of subscribers or other members of the covered group, shall provide coverage for such newborn children, including adopted newborn children that are placed with the adoptive subscriber or other member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive subscriber or other member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the

date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not attained age eighteen (18) years as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive subscriber or other member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive subscriber or other member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a subscriber or other member of the covered group continues in the same manner as it would with respect to a naturally born child of the subscriber or other member of the covered group until the first to occur of the following events:

- (a) Date the child is removed permanently from that placement and the legal obligation terminates; or
- (b) The date the subscriber or other member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) An insurer shall not restrict coverage under a group disability insurance contract or a blanket disability insurance contract of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of a child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) Any new or renewing group disability insurance contract or blanket disability insurance contract delivered or issued for delivery in this state shall provide that an unmarried child ~~under the age of twenty-one (21) years or an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent shall be permitted to remain on the parent's or parents' contract. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' contract.

(4) No policy of disability insurance which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the policy. If a fixed amount is specified in such policy for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the policy. Where the policy contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the policy. This section shall apply to all disability policies except any group disability policy made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All policies subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such policy which is in conflict with this section shall be of no force or effect.

(5) From and after January 1, 1998, no policy of disability insurance which provides medical expense maternity benefits, shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of 1996.

SECTION 3. That Section 41-3216, Idaho Code, be, and the same is hereby amended to read as follows:

41-3216. BENEFITS. (1) A society may provide the following contractual benefits in any form:

- (a) Death benefits;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits;
- (e) Hospital, medical or nursing benefits; and
- (f) Monument or tombstone benefits to the memory of deceased members; and
- (g) Such other benefits as authorized for life insurers and which are not inconsistent with this chapter.

(2) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (1) of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

(3) Any new or renewing society contract relating to hospital, medical or nursing benefits delivered or issued for delivery in this state shall provide that an unmarried child ~~under the age of twenty one (21) years or an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who is financially dependent upon receives more than one-half (1/2) of his financial support from the parent shall be permitted to remain on the parent's or parents' contract. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' contract.

SECTION 4. That Section 41-3436, Idaho Code, be, and the same is hereby amended to read as follows:

41-3436. DEPENDENT'S COVERAGE -- DEPENDENT'S TERMINATION OF COVERAGE, DISABILITY AND DEPENDENCY PROOF AND APPLICATION. (1) Any new or renewing subscriber contract delivered or issued for delivery in this state shall provide that an unmarried child ~~under the age of twenty one (21) years or an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who is financially dependent upon receives more than one-half (1/2) of his financial support from the parent shall be permitted to remain on the parent's or parents' contract. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' contract.

(2) There shall be a provision that a subscriber's contract delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act under which coverage of a dependent of a subscriber terminates at a specified age shall, with respect to an

unmarried child who is incapable of self-sustaining employment by reason of mental retardation or physical handicap and who became so incapable prior to attainment of the limiting age and who is chiefly dependent upon such member for support and maintenance, not to terminate while the contract remains in force and the dependent remains in such condition, if the member has within thirty-one (31) days of such dependent's attainment of the limiting age submitted proof of such dependent's incapacity as described herein. The service corporation may require at reasonable intervals during the two (2) years following the child's attainment of the limiting age subsequent proof of the child's disability and dependency. After the two (2) year period, such subsequent proof may not be required more than once each year.

SECTION 5. That Section 41-3923, Idaho Code, be, and the same is hereby amended to read as follows:

41-3923. COVERAGE OF ADOPTED NEWBORN CHILDREN -- COVERAGE OF MATERNITY AND COMPLICATIONS OF PREGNANCY. (1) Any contract delivered or issued for delivery in this state by an organization offering a managed care plan for which a certificate of authority is required, which provides coverage for injury or sickness for newborn dependent children of the members of the covered group, shall provide such coverage for such newborn children and infants, including adopted newborn children that are placed with the adoptive member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not reached eighteen (18) years as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a member of the covered group continues in the same manner as it would with respect to a naturally born child of the member of the covered group until the first to occur of the following events:

(a) Date the child is removed permanently from that placement and the legal obligation terminates; or

(b) The date the member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) The managed care organization shall not restrict coverage under a health care contract of any dependent child adopted by a member, or placed with a member for adoption, solely on the basis of a preexisting condition of the child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the member is eligible for coverage under the plan.

(3) Any new or renewing group disability insurance contract or blanket disability insurance contract delivered or issued for delivery in this state shall provide that an unmarried child under the age of twenty-five (25) years and who receives more than one-half (1/2) of his financial support from the parent shall be permitted to remain on the parent's or parents' contract. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' contract.

(4) No health care contract which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, copayments, or coinsurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan.

Where a plan which provides or arranges direct health care services for its members contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from prenatal care and delivery. However, expenses resulting from any delivery in excess of the deductible amount shall be treated as expenses for any other illness under the plan. If the pregnancy is interrupted, the maternity deductible charged for prenatal care and delivery shall be based on the value of the medical services received, providing that it is never more than two-thirds (2/3) of the plan's maternity deductible.

This section shall apply to all health care contracts except any group health care contracts made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All health care contracts subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

(45) From and after January 1, 1998, no policy of disability insurance which provides medical expense maternity benefits shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of 1996.

SECTION 6. That Section 41-4023, Idaho Code, be, and the same is hereby amended to read as follows:

41-4023. COVERAGE FROM MOMENT OF BIRTH -- COMPLICATIONS OF PREGNANCY. (1) Every self-funded plan issued in this state or providing coverage to any covered family residing within this state, shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn child or infant of any covered family covered, including a newborn child placed with the adoptive covered family within sixty (60) days of the adopted child's date of birth. Coverage under the self-funded plan for an adopted newborn child placed with the adoptive covered family more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accordance with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not reached eighteen (18) years of age as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive

covered family, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive covered family signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a covered family continues in the same manner as it would with respect to a naturally born child of the covered family until the first to occur of the following events:

(a) Date the child is removed permanently from that placement and the legal obligation terminates; or

(b) The date the covered family rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility. No such plan may be issued or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn or adopted children or infants of a covered family covered from and after the moment of birth that is inconsistent with the provisions of this section.

(2) Neither the plan trustee or employer nor an insurer shall restrict coverage under a self-funded plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of the child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) No self-funded plan which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan. This subsection shall apply to all self-funded plans except any such plan made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this subsection, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All plans subject to this subsection and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

(4) From and after January 1, 1998, no self-funded plan that provides maternity benefits shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of 1996.

(5) Any new or renewing self-funded group disability plan or blanket disability plan delivered or issued for delivery in this state shall provide that an unmarried child ~~under the age of twenty one (21) years or an unmar-~~

~~ried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent shall be permitted to remain on the parent's or parents' plan. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' plan.

SECTION 7. That Section 41-4124, Idaho Code, be, and the same is hereby amended to read as follows:

41-4124. SERVICES PROVIDED BY GOVERNMENTAL ENTITIES. (1) From and after July 1, 2006, no joint public agency self-funded plan shall be issued in Idaho which excludes from coverage services rendered the subscriber while a resident in an Idaho state institution, provided the services to the subscriber would be covered by the contract if rendered to him outside an Idaho state institution.

(2) From and after July 1, 2006, no joint public agency self-funded plan may contain any provision denying or reducing benefits otherwise provided under the policy for the reason that the person insured is receiving health or mental health care or developmental services provided by the department of health and welfare, whether or not the department of health and welfare bases its charges for such services on the recipient's ability to pay. Provided, nothing in this section shall prevent the issuance of a contract which excludes or reduces benefits where the charge level or amount of the charge levied by a governmental entity for such services would vary or be affected in any way by the existence of coverage under a joint public agency self-funded plan.

(3) Any new or renewing joint public agency self-funded plan delivered or issued for delivery in this state shall provide that an unmarried child ~~under the age of twenty-one (21) years or an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent shall be permitted to remain on the parent's or parents' plan. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' plan.

SECTION 8. That Section 41-4703, Idaho Code, be, and the same is hereby amended to read as follows:

41-4703. DEFINITIONS. As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the director that a small employer carrier is in compliance with the provisions of section 41-4706, Idaho Code, based upon the person's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Agent" means a producer as defined in section 41-1003(8), Idaho Code.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Board" means the board of directors of the small employer reinsurance program and the individual high risk reinsurance pool as provided for in section 41-5502, Idaho Code.

(6) "Carrier" means any entity that provides, or is authorized to provide, health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(7) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this chapter.

(8) "Catastrophic health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-4712, Idaho Code.

(9) "Class of business" means all or a separate grouping of small employers established pursuant to section 41-4705, Idaho Code.

(10) "Control" shall be defined in the same manner as in section 41-3801(2), Idaho Code.

(11) "Dependent" in any new or renewing plan means a spouse, an unmarried child ~~under the age of twenty-one (21) years, an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent, and or an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(12) "Director" means the director of the department of insurance of the state of Idaho.

(13) "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the carrier, an employee who works between twenty (20) and thirty (30) hours per week. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary, seasonal or substitute basis. The term eligible employee may include public officers and public employees without regard to the number of hours worked when designated by a small employer.

(14) "Established geographic service area" means a geographic area, as approved by the director and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(15) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or managed care organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issues for a period of twelve (12) months or less.

(16) "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(17) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

(a) The individual meets each of the following:

(i) The individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, or the involuntary termination of the qualifying previous coverage; and

(iii) The individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage.

(b) The individual is employed by an employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(c) A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order.

(d) The individual first becomes eligible.

(e) If an individual seeks to enroll a dependent during the first sixty (60) days of eligibility, the coverage of the dependent shall become effective:

(i) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) In the case of a dependent's birth, as of the date of such birth; or

(iii) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(18) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(19) "Plan of operation" means the plan of operation of the program established pursuant to section 41-4711, Idaho Code.

(20) "Plan year" means the year that is designated as the plan year in the plan document of a group health benefit plan, except that if the plan document does not designate a plan year or if there is no plan document, the plan year ~~plan~~ is:

(a) The deductible/limit year used under the plan;

(b) If the plan does not impose deductibles or limits on a yearly basis, then the plan year is the policy year;

(c) If the plan does not impose deductibles or limits on a yearly basis or the insurance policy is not renewed on an annual basis, then the plan year is the employer's taxable year; or

(d) In any other case, the plan year is the calendar year.

(21) "Premium" means all moneys paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(22) "Program" means the Idaho small employer reinsurance program created in section 41-4711, Idaho Code.

(23) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool or any other similar publicly sponsored program; or

(b) Any other group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service corporation, or a fraternal benefit society, that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

(24) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(25) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to section 41-4711, Idaho Code.

(26) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

(27) "Risk-assuming carrier" means a small employer carrier whose application is approved by the director pursuant to section 41-4710, Idaho Code.

(28) "Small employer" means any person, firm, corporation, partnership or association that is actively engaged in business that employed an average of at least two (2) but no more than fifty (50) eligible employees on business days during the preceding calendar year and that employs at least two (2) but no more than fifty (50) eligible employees on the first day of the plan year, the majority of whom were and are employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

(29) "Small employer basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-4712, Idaho Code.

(30) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one (1) or more small employers in this state.

(31) "Small employer catastrophic health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-4712, Idaho Code.

(32) "Small employer standard health benefit plan" means a health benefit plan developed pursuant to section 41-4712, Idaho Code.

SECTION 9. That Section 41-5203, Idaho Code, be, and the same is hereby amended to read as follows:

41-5203. DEFINITIONS. As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the director that an individual carrier is in compliance with the provisions of section 41-5206, Idaho Code, based upon the person's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the individual carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Agent" means a producer as defined in section 41-1003(8), Idaho Code.

(4) "Base premium rate" means, as to a rating period, the lowest premium rate charged or that could have been charged under a rating system by

the individual carrier to individuals with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Carrier" means any entity that provides health insurance in this state. For purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(6) "Case characteristics" means demographic or other objective characteristics of an individual that are considered by the individual carrier in the determination of premium rates for the individual, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this chapter.

(7) "Control" shall be defined in the same manner as in section 41-3801(2), Idaho Code.

(8) "Dependent" in any new or renewing plan means a spouse, an unmarried child ~~under the age of twenty-one (21) years, an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent, and or an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(9) "Director" means the director of the department of insurance of the state of Idaho.

(10) "Eligible individual" means an Idaho resident individual or dependent of an Idaho resident:

(a) Who is under the age of sixty-five (65) years, is not eligible for coverage under a group health plan, part A or part B of title XVIII of the social security act (medicare), or a state plan under title XIX (medicaid) or any successor program, and who does not have other health insurance coverage; or

(b) Who is a federally eligible individual (one who meets the eligibility criteria set forth in the federal health insurance portability and accountability act of 1996 Public Law 104-191, Sec. 2741(b) (HIPAA)).

An "eligible individual" can be the dependent of an eligible employee, which eligible employee is receiving health insurance benefits subject to the regulation of title 41, Idaho Code.

(11) "Established geographic service area" means a geographic area, as approved by the director and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(12) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance, or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(13) "Index rate" means, as to a rating period for individuals with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(14) "Individual basic health benefit plan" means a lower cost health benefit plan developed pursuant to chapter 55, title 41, Idaho Code.

(15) "Individual catastrophic A health benefit plan" means a higher limit health benefit plan developed pursuant to chapter 55, title 41, Idaho Code.

(16) "Individual catastrophic B health benefit plan" means a health benefit plan with limits higher than an individual catastrophic A health benefit plan developed pursuant to chapter 55, title 41, Idaho Code.

(17) "Individual HSA compatible health benefit plan" means a health savings account compatible health benefit plan developed pursuant to section 41-5511, Idaho Code.

(18) "Individual standard health benefit plan" means a health benefit plan developed pursuant to chapter 55, title 41, Idaho Code.

(19) "New business premium rate" means, as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the individual carrier to individuals with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(20) "Premium" means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier, including any fees or other contributions associated with the health benefit plan.

(21) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool, or any other similar publicly sponsored program; or

(b) Any group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a managed care organization, hospital or professional service corporation, or a fraternal benefit society, that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

(22) "Rating period" means the calendar period for which premium rates established by a carrier are assumed to be in effect.

(23) "Reinsuring carrier" means a carrier participating in the Idaho individual high risk reinsurance pool established in chapter 55, title 41, Idaho Code.

(24) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

(25) "Risk-assuming carrier" means a carrier whose application is approved by the director pursuant to section 41-5210, Idaho Code.

(26) "Individual carrier" means a carrier that offers health benefit plans covering eligible individuals and their dependents.

SECTION 10. That Section 41-5501, Idaho Code, be, and the same is hereby amended to read as follows:

41-5501. DEFINITIONS. As used in this chapter:

(1) "Agent" means a producer as defined in section 41-1003(8), Idaho Code.

(2) "Board" means the board of directors of the Idaho high risk individual reinsurance pool established in this chapter and the Idaho small employer reinsurance program established in section 41-4711, Idaho Code.

(3) "Carrier" means any entity that provides, or is authorized to provide, health insurance in this state. For purposes of this chapter, carrier includes an insurance company, any other entity providing reinsurance including excess or stop loss coverage, a hospital or professional service

corporation, a fraternal benefit society, a managed care organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(4) "Dependent" in any new or renewing plan means a spouse, an unmarried child ~~under the age of twenty-one (21) years, an unmarried child who is a full-time student~~ under the age of twenty-five (25) years and who ~~is financially dependent upon~~ receives more than one-half (1/2) of his financial support from the parent, and or an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(5) "Director" means the director of the department of insurance of the state of Idaho.

(6) "Eligible individual" means:

(a) An Idaho resident individual or dependent of an Idaho resident who is under the age of sixty-five (65) years, is not eligible for coverage under a group health plan, part A or part B of title XVIII of the social security act (medicare), or a state plan under title XIX (medicaid) or any successor program, and who does not have other health insurance coverage; or

(b) An individual who is legally domiciled in Idaho on the date of application to the pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986; or

(c) An Idaho resident individual or a dependent of an Idaho resident who is a federally eligible individual (one who meets the eligibility criteria set forth in the federal health insurance portability and accountability act of 1996 Public Law 104-191, Sec. 2741(b) (HIPAA)).

Coverage under a basic, standard, catastrophic A, catastrophic B, or HSA compatible health benefit plan shall not be available to any individual who is covered under other health insurance coverage, except as provided in section 41-5510(4), Idaho Code. For purposes of this chapter, to be eligible, an individual must also meet the requirements of section 41-5510, Idaho Code.

(7) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance, or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(8) "Individual basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-5511, Idaho Code.

(9) "Individual carrier" means a carrier that offers health benefit plans covering eligible individuals and their dependents.

(10) "Individual catastrophic A health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-5511, Idaho Code.

(11) "Individual catastrophic B health benefit plan" means a health benefit plan offering limits higher than a catastrophic A health benefit plan developed pursuant to section 41-5511, Idaho Code.

(12) "Individual HSA compatible health benefit plan" means a health savings account compatible health benefit plan developed pursuant to section 41-5511, Idaho Code.

(13) "Individual standard health benefit plan" means a health benefit plan developed pursuant to section 41-5511, Idaho Code.

(14) "Plan" or "pool plan" means the individual basic, standard, catastrophic A, catastrophic B, or HSA compatible health benefit plan established pursuant to section 41-5511, Idaho Code.

(15) "Plan of operation" means the plan of operation of the individual high risk reinsurance pool established pursuant to this chapter.

(16) "Pool" means the Idaho high risk reinsurance pool.

(17) "Premium" means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier, including any fees or other contributions associated with the health benefit plan.

(18) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool, or any other similar publicly sponsored program; or

(b) Any group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a managed care organization or a fraternal benefit society.

(19) "Reinsurance premium" means the premium set by the board pursuant to section 41-5506, Idaho Code, to be paid by a reinsuring carrier for plans issued under the pool.

(20) "Reinsuring carrier" means a carrier participating in the individual high risk reinsurance pool established by this chapter.

(21) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

Approved April 8, 2009.

CHAPTER 126
(H.B. No. 113)

AN ACT

RELATING TO PLUMBING AND PLUMBERS; AMENDING SECTION 54-2606, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE IDAHO PLUMBING BOARD AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-2617, IDAHO CODE, TO PROVIDE PROCEDURE FOR RENEWAL OF A PLUMBING CONTRACTOR OR JOURNEYMAN CERTIFICATE OF COMPETENCY, TO PROVIDE TIMING AND PROCEDURE FOR RENEWAL OF A PLUMBING SPECIALTY CONTRACTOR AND SPECIALTY JOURNEYMAN CERTIFICATE OF COMPETENCY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2606, Idaho Code, be, and the same is hereby amended to read as follows:

54-2606. POWERS AND DUTIES OF THE IDAHO PLUMBING BOARD. (1) The board shall have the general administration and supervision of the design, construction, installation, improvement, extension and alteration of plumbing and plumbing systems, except that which has been heretofore and hereinafter exempted from the jurisdiction of this board, in connection with all buildings, residences and structures in this state including buildings, residences and structures owned by the state or any political subdivision thereof.

(2) The division of building safety shall enforce the minimum standards and requirements therefor as provided by this chapter.

(3) The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter, and it may among other things:

(a) Establish the fees to be charged for permits and inspections of plumbing systems.

(b) Hold public meetings and attend or be represented at such meetings, within or without the state, prepare and publish rules pertaining to this chapter, and such other information as may be necessary, and furnish copies thereof to those engaged in the business, trade, practice or work of plumbing and pipefitting and to the public upon request.

(c) Furnish standards and procedures and prescribe reasonable rules for examinations, qualification and certification of plumbing contractors and journeymen and apprentice plumbers not herein prescribed, including the establishment of continuing education requirements for journeymen and plumbing contractors.

(d) Require the furnishing of a compliance bond by plumbing contractors in an amount not to exceed two thousand dollars (\$2,000) for the contractor classification or evidence of such coverage by a corporate industry group bond acceptable to the board.

~~(de)~~ Furnish standards and procedures and prescribe reasonable rules to provide for the certification of specialty contractors, specialty journeymen, and specialty apprentices, including the furnishing of a compliance bond in an amount not to exceed two thousand dollars (\$2,000) for the specialty contractor classification or evidence of coverage by a corporate industry group bond acceptable to the board.

(ef) Establish by administrative rule civil penalties not to exceed one thousand dollars (\$1,000) for each count or separate offense, to be paid for violations of this chapter and rules of the Idaho plumbing board; and to establish by administrative rule the process by which appeals from the imposition of civil penalties may be heard. The board is authorized to affirm, reject, decrease or increase the penalty imposed; however, the board shall not increase any penalty imposed to an amount exceeding one thousand dollars (\$1,000) for each individual count or separate offense.

SECTION 2. That Section 54-2617, Idaho Code, be, and the same is hereby amended to read as follows:

54-2617. CERTIFICATE EXPIRATION -- RENEWAL -- RULES FOR STAGGERED SCHEDULE. (1) Certificates of competency shall be issued for a period of three (3) years, and shall expire three (3) years from the date of issue, unless sooner revoked or suspended.

(2) A certificate of competency for plumbing contractor or journeyman may be renewed at any time during the month prior to its expiration by providing proof of completion of the continuing education requirements as established by the board and compliance with all other renewal requirements of statute or rule. A certificate of competency for plumbing specialty contractor and specialty journeyman may be renewed at any time during the month prior to its expiration by compliance with all renewal requirements of statute or rule.

(3) Failure of any holder to timely renew a certificate of competency shall cause lapse of the certificate, but it may be revived within one (1) year without examination only upon payment of the full initial fee.

~~(34)~~ The board shall promulgate rules to provide for a staggered schedule of issuing and renewing certificates of competency.

CHAPTER 127
(H.B. No. 115)

AN ACT

RELATING TO MODULAR BUILDINGS; AMENDING CHAPTER 43, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4304A, IDAHO CODE, TO PROVIDE FOR APPOINTMENT AND QUALIFICATIONS OF MODULAR BUILDING INSPECTORS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 43, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-4304A, Idaho Code, and to read as follows:

39-4304A. APPOINTMENT AND QUALIFICATIONS OF MODULAR BUILDING INSPECTORS. The administrator may appoint such number of modular building inspectors as is necessary for the effective enforcement of this chapter. Each modular building inspector shall:

- (1) Be knowledgeable regarding the type of installation being inspected;
- (2) Be certified as an inspector by an organization designated in administrative rule promulgated by the board. Each inspection certification shall correspond to the type of installation being inspected;
- (3) Demonstrate knowledge of the provisions of the Idaho Code and the administrative rule governing the type of installation being inspected; and
- (4) Not be permitted to:
 - (a) Be engaged or be financially interested in any business, trade, practice or work related to this chapter;
 - (b) Sell any supplies connected to the electrical, plumbing or heating, ventilation and air conditioning (HVAC) business; or
 - (c) Act as an agent, directly or indirectly, for any person, firm, copartnership, association or corporation engaged in the electrical, plumbing or HVAC business.

Approved April 8, 2009.

CHAPTER 128
(H.B. No. 128)

AN ACT

RELATING TO THE PEA AND LENTIL COMMISSION; AMENDING SECTION 22-3507, IDAHO CODE, TO REVISE COMPENSATION PROVISIONS RELATING TO MEMBERS OF THE PEA AND LENTIL COMMISSION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-3507, Idaho Code, be, and the same is hereby amended to read as follows:

22-3507. COMPENSATION OF MEMBERS. Members of the commission shall be compensated as provided by section 59-509 (~~eb~~), Idaho Code.

Approved April 8, 2009.

CHAPTER 129
(H.B. No. 129)

AN ACT

RELATING TO THE PEA AND LENTIL COMMISSION; AMENDING SECTION 22-3506, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SELECTION OF COMMISSION MEMBERS, TO REVISE PROVISIONS RELATING TO TERMS OF OFFICE OF COMMISSION MEMBERS, TO REVISE PROVISIONS RELATING TO VACANCIES ON THE COMMISSION AND TO PROVIDE THAT APPOINTMENTS TO FILL VACANCIES SHALL BE FOR THE REMAINDER OF THE TERM FOR THAT POSITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-3506, Idaho Code, be, and the same is hereby amended to read as follows:

22-3506. SELECTION OF COMMISSION -- TERMS OF MEMBERS -- VACANCIES. (1) ~~The grower and dealer or processor members of the commission shall be selected as follows:~~ governor shall appoint seven (7) persons to the commission based upon submitted nominee petitions. Two (2) members shall be dealers or processors and five (5) members shall be growers.

(a) Growers, dealers and processors shall nominate from among themselves, by petition, at least not more than two (2) names for each position to be filled on the commission.

(b) In the case of grower members, petitions shall be signed by not less than ~~twenty five~~ fifteen (15) qualified growers. The nominations made shall be, as near as practicable, representative of lentils, smooth green, and yellows, and Austrian winter peas. No more than three (3) grower members shall be appointed from one (1) political party dry peas and chickpeas.

(c) Petitions for dealer or processor members shall be signed by not less than ~~eight three~~ (83) qualified processors or dealers.

~~(d) (1) The governor shall appoint seven (7) persons to the commission based upon the nominee petitions. Two (2) shall be dealers or processors and five (5) shall be growers.~~

(2) The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and three (3) of the original members shall serve for three (3) years, provided however, that the terms of office of both dealer members of the commission shall not expire in the same year. The term of office of members of the commission thereafter shall be three (3) years, commencing on July 1.

~~Provided, however, that both dealer members of the commission terms of office shall not expire in the same year.~~

(23) Members of the commission may not serve more than two (2) consecutive terms, nor may they hold or file for any elective political office while a member of the commission.

(34) In the event there are vacancies in the commission, it shall be the duty of the ~~Idaho~~ western pea and lentil growers' association, as the designated representative of Idaho growers of dry peas, lentils and chickpeas or, in the case of the dealer positions, the U.S. pea and lentil trade association as the designated representative of the dealers and processors of Idaho, to submit to the governor at least not more than two (2) qualified names for each vacancy supported by the proper nominating petitions. The governor shall make the appointment or appointments to fill each vacancy. The appointment shall be for the remainder of the term for that position.

CHAPTER 130
(H.B. No. 145, As Amended)

AN ACT

RELATING TO STERILIZATION; AMENDING SECTION 39-3902, IDAHO CODE, TO REVISE A DEFINITION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3902, Idaho Code, be, and the same is hereby amended to read as follows:

39-3902. DEFINITIONS. For purposes of this chapter, the following words and terms have the meanings hereinafter stated:

(1) "Emergency medical treatment" means immediate medical intervention required, according to the prevailing medical standards of judgment and practice within the community, because of the medical condition of the person subject to this chapter.

(2) "Evaluation committee" means an interdisciplinary team consisting of at least four (4) individuals qualified by education and training to evaluate an individual as required by the provisions of this chapter, and an advocate designated by the person subject to this chapter. Each committee must include: two (2) social workers, at least one (1) of whom must be a master's level; a clinical psychologist or a psychiatrist; and a physician.

(3) "Informed assent" means a process by which a person subject to this chapter who lacks or is alleged to lack the capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks and consequences of the procedures and, insofar as he or she is able to, indicates willingness and choice to undergo sterilization.

(4) "Interested person" means an interested, responsible adult including, but not limited to, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person subject to this chapter, or if none of these are available, the department of health and welfare.

(5) "Medically necessary" means that, according to the prevailing medical standards of judgment and practice within the community, the procedure is reasonably calculated to prevent or treat conditions in the person subject to this chapter that endanger life, cause severe pain, or cause functionally significant deformity or malfunction, and for which there is not an equally effective alternative course of treatment available or suitable.

(6) "Person subject to this chapter" means all ~~adults~~ persons, except adults who may consent to their own treatment pursuant to chapter 45, title 39, Idaho Code. Adults who are alleged to lack this capacity are also persons subject to this chapter.

(7) "Physician" means a person duly licensed in the state of Idaho to practice medicine and surgery without restriction pursuant to laws of the state of Idaho.

(8) "Records" includes, but is not limited to, all court files of judicial proceedings brought under this chapter, written clinical information, observations and reports, or fiscal documents relating to a person subject to this chapter who has undergone or is about to undergo sterilization and which are related to the sterilization.

(9) "Sterilization" means any medical or surgical operation or procedure which can be expected to result in a patient's permanent inability to reproduce.

Approved April 8, 2009.

CHAPTER 131
(H.B. No. 157, As Amended)

AN ACT

RELATING TO THE IDAHO EDUCATION NETWORK; AMENDING CHAPTER 1, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-125A, IDAHO CODE, TO PROVIDE DUTIES OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE STATE DEPARTMENT OF EDUCATION REGARDING THE IDAHO EDUCATION NETWORK; AND AMENDING SECTION 67-5745D, IDAHO CODE, TO REVISE AN IMPLEMENTATION PLAN THAT THE DEPARTMENT OF ADMINISTRATION SHALL FOLLOW, TO REMOVE CERTAIN DUTIES OF THE STATE DEPARTMENT OF EDUCATION, TO PROVIDE CERTAIN DEPARTMENT OF ADMINISTRATION DUTIES AND TO PROVIDE FOR STATE DEPARTMENT OF EDUCATION POLICIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-125A, Idaho Code, and to read as follows:

33-125A. IDAHO EDUCATION NETWORK -- DUTIES OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE STATE DEPARTMENT OF EDUCATION. (1) Under the direction of the state superintendent of public instruction, the state department of education shall:

(a) Coordinate with the Idaho digital learning academy as provided for in chapter 55, title 33, Idaho Code, the state board of education and school districts to distribute telecourses, teleconferences and other instructional and training services to and between public schools;

(b) Coordinate with the Idaho digital learning academy, the state board of education and institutions of higher education to distribute college credit telecourses, teleconferences and other instructional and training services;

(c) Act as a clearinghouse for the materials, courses, publications and other applicable information related to the requirements of this section; and

(d) Coordinate all e-rate funding applications for Idaho's school districts and implement e-rate funds through the department of administration for related services provided under the purview of the Idaho education network (IEN).

(2) (a) The superintendent of public instruction shall appoint an Idaho education network program and resource advisory council (IPRAC) made up of representatives from public and higher education, the Idaho digital learning academy, state government and the private sector to advise and assist the department of education in performing its duties pursuant to this section and section 67-5745D, Idaho Code.

(b) The superintendent of public instruction shall determine the number of persons necessary to provide the assistance required from the IPRAC. Members of the IPRAC shall be selected for their knowledge of education curricula, content, professional training and such other issues that may be essential for the productive delivery of education resources to schools throughout the state utilizing the IEN for the benefit and enhancement of the education system statewide. Persons appointed may be from the public or private sector and shall possess special knowledge in the areas of need for the successful operation and management of the IEN.

(c) The superintendent of public instruction shall, in consultation with the department of administration, establish a technical subcommittee of the IPRAC, to be co-chaired by the chief information officer of the department of administration, or his designee, and a person

currently employed in a related public or higher education technology function, to advise and assist the department of administration in the technical development and operation of the IEN as required pursuant to section 67-5745D, Idaho Code. Members of the technical subcommittee shall be selected for their knowledge and experience in the development and technology necessary for the procurement and/or ongoing operation of a network that will enable the delivery of educational materials and resources, as provided in this section and section 67-5745D, Idaho Code.

(d) The superintendent of public instruction may establish other subcommittees to provide specific assistance to the department of administration or the department of education, as may be deemed expedient and necessary for such purpose.

(e) Membership on the technical or any other subcommittee is not limited to the members of the IPRAC. Members of the IPRAC or any associated subcommittee shall not be compensated for service as such member, but shall receive per diem and travel allowance as provided for state employees, in such amount as is provided for in section 67-2008, Idaho Code.

SECTION 2. That Section 67-5745D, Idaho Code, be, and the same is hereby amended to read as follows:

67-5745D. IDAHO EDUCATION NETWORK. (1) The legislature finds that:

(a) Idaho does not have a statewide coordinated and funded high-bandwidth education network;

(b) Such a network will enable required and advanced courses, concurrent enrollment and teacher training to be deliverable to all public high schools through an efficiently-managed statewide infrastructure; and

(c) Aggregating and leveraging demand at the statewide level will provide overall benefits and efficiencies in the procurement of telecommunications services, including high-bandwidth connectivity, internet access, purchases of equipment, federal subsidy program expertise and other related services.

(2) As used in this section, "Idaho Education Network (IEN)" means the coordinated, statewide telecommunications distribution system for distance learning for each public school, including two-way interactive video, data, internet access and other telecommunications services for providing distance learning. The term also includes connections to each institution of higher education and other locations as necessary to facilitate distance education, teacher training and other related services.

(3) The department of administration shall provide administrative oversight for IEN.

(4) In performing the duties under this section, the department of administration shall consider the following goals to ensure that:

(a) Idaho will utilize technology to facilitate comparable access to educational opportunities for all students;

(b) Idaho will be a leader in the use of technology to deliver advanced high school curricula, concurrent college credit, and ongoing teacher training on an equitable basis throughout the state; and

(c) Idaho will leverage its statewide purchasing power for the IEN to promote private sector investment in telecommunications infrastructure that will benefit other technology applications such as telemedicine, telecommuting, telegovernment and economic development.

(5) In performing the duties under this section, subject to the availability of funds, the department of administration shall:

(a) Coordinate the development, outsourcing and implementation of a statewide network for education, which shall include high-bandwidth

connectivity, two-way interactive video and internet access, using primarily fiber optic and other high-bandwidth transmission media;

(b) Consider statewide economic development impacts in the design and implementation of the educational telecommunications infrastructure;

(c) Coordinate and support the telecommunications needs, other than basic voice communications of public education;

(d) Procure high-quality, cost-effective internet access and appropriate interface equipment to public education facilities;

(e) Procure telecommunications services and equipment on behalf of public education;

(f) Procure and implement technology and equipment for the delivery of distance learning;

(g) In conjunction with the state department of education, apply for state and federal funding for technology on behalf of IEN services;

(h) Procure telecommunications services and equipment for the IEN through an open and competitive bidding process;

(i) Work with the private sector to deliver high-quality, cost-effective services statewide; and

(j) Cooperate with state and local governmental and educational entities and provide leadership and consulting for telecommunications for education.

(6) The department of administration shall follow an implementation plan that:

(a) In the first phase, will connect each public high school with a scalable, high-bandwidth connection, including connections to each institution of higher education and the Idaho digital learning academy as provided for in chapter 55, title 33, Idaho Code, as necessary, thereby allowing any location on IEN to share educational resources with any other location;

(b) Upon completion of the first phase, shall provide that each public high school will be served with high-bandwidth connectivity, internet access and equipment in at least one (1) two-way interactive video classroom; and

(c) In subsequent phases, will evaluate and make recommendations to the legislature for:

(i) Connectivity to each elementary and middle school;

(ii) The addition of libraries to the IEN; and

(iii) The migration of state agency locations from current technology and services.

~~(7) Under the direction of the state superintendent of public instruction, the state department of education shall:~~

~~(a) Coordinate with the state board of education and school districts to distribute telecourses, teleconferences and other instructional and training services to and between public schools;~~

~~(b) Coordinate with the state board of education and institutions of higher education to distribute college credit telecourses, teleconferences and other instructional and training services;~~

~~(c) Act as a clearinghouse for the materials, courses, publications and other applicable information related to the requirements of this section; and~~

~~(d) Coordinate all e-rate funding applications for Idaho's school districts and implement e-rate funds, through the department of administration, for related services provided under the purview of the IEN~~ The department of administration shall, in its administration of the provisions of this section, comply with all provisions of federal law and regulations necessary to obtain and maintain qualification of the IEN and its participating schools in order to enable receipt of federal universal service support funding and the federal e-rate discount program for schools and libraries including, but not limited to, maintenance of

the IEN as a separate and distinct network to the extent necessary to obtain and maintain such qualification.

(8) Educational institutions served by the IEN shall manage site operations under policyies established by the department of administration and the state department of education.

(9) Idaho education network fund. There is hereby created in the state treasury the Idaho education network fund. Moneys in the fund shall consist of funds received from state appropriations, grants, federal moneys, donations or funds from any other source. Moneys in the fund may be expended, pursuant to appropriation, for implementation and ongoing costs of the Idaho education network. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

Approved April 8, 2009.

CHAPTER 132

(H.B. No. 160, As Amended)

AN ACT

RELATING TO BONDS OF LIBRARY DISTRICTS; AMENDING SECTION 33-2728, IDAHO CODE, TO PROVIDE THAT A LIBRARY DISTRICT MAY ISSUE BONDS IN AN AMOUNT NOT TO EXCEED ONE PERCENT OF THE MARKET VALUE FOR ASSESSMENT PURPOSES OF PROPERTY WITHIN THE DISTRICT, LESS ANY AGGREGATE OUTSTANDING INDEBTEDNESS AND TO PROVIDE CERTAIN DAYS FOR AN ELECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-2728, Idaho Code, be, and the same is hereby amended to read as follows:

33-2728. BOND ELECTION. (1) The purposes for which bonds may be issued shall be: To acquire, purchase, or improve a library site or sites; to build a library or libraries, or other building or buildings; to demolish or remove buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all facilities and appliances necessary to maintain and operate the buildings of the library; and to purchase motor vehicles for use as bookmobiles.

The library district may issue bonds in an amount not to exceed ~~four-tenths~~ one percent (~~41%~~) of the market value for assessment purposes of property within the district, less any aggregate outstanding indebtedness.

The board of trustees of any library district, upon approval of a majority thereof, may call a bond election on the question as to whether the board shall be empowered to issue bonds of the district in an amount and for a period of time to be stated in the notice of election. The notice of bond elections, the qualification of bond electors, the conduct of the election, and the canvass of election and determination of the result of election shall be in accordance with chapter 14, title 34, Idaho Code, and with the general election laws of the state of Idaho. Provided however, that any such election conducted pursuant to this section shall be held on election day in the month of May or November as provided for in section 34-106(1), Idaho Code. The majority required to pass a bond issue shall be two-thirds (2/3) of those voting in the election. The issuance of bonds, the expenditure of bond proceeds and the repayment of the bonds shall all be as specified in school district law.

(2) District library bond funds may not be used to purchase or expand a building for a contracting agency providing library services unless the dis-

strict library gains an ownership share in the building proportional to the percentage of district bond funds used to purchase or expand the building.

Approved April 8, 2009.

CHAPTER 133
(H.B. No. 188)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2087, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO PROVIDE ADDITIONAL DUTIES TO A CLIENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2087, Idaho Code, be, and the same is hereby amended to read as follows:

54-2087. DUTIES TO A CLIENT. If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

- (1) To perform the terms of the written agreement with the client;
- (2) To exercise reasonable skill and care;
- (3) To be available to the client to receive and timely present all written offers and counteroffers;
- (4) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:
 - (a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;
 - (b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or
 - (c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;
 - (d) For the benefit of a client/buyer: when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;
 - (e) For the benefit of a client/seller: upon written request by a client/seller, requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.
- (5) To properly account for moneys or property placed in the care and responsibility of the brokerage pursuant to section 54-2041, Idaho Code; and
- (6) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:
 - (a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its associated licensees;
 - (b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who

later associates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the brokerage's prior representation of the former client and that confidential client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

(7) Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to a client to conduct an independent inspection of the property and owe no duty to independently verify the accuracy or completeness of any statement or representation made regarding a property. Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to conduct an independent investigation of either party's financial ability to complete a real estate transaction.

(8) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(9) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the client in the transaction.

(10) Nothing in this section shall result in imputed knowledge between multiple licensees of the brokerage when neither has reason to have such knowledge.

(11) A brokerage and its licensees may represent two (2) or more buyers who wish to make an offer for the purchase of the same real property; provided, that the brokerage or its licensee has advised all such buyers in writing of the same.

Approved April 8, 2009.

CHAPTER 134
(H.B. No. 189)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2041, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE REQUIREMENTS AND RESPONSIBILITIES OF REAL ESTATE BROKERS AND THEIR LICENSEES IN CONNECTION WITH TRUST ACCOUNTS AND ENTRUSTED PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2041, Idaho Code, be, and the same is hereby amended to read as follows:

54-2041. TRUST ACCOUNTS AND ENTRUSTED PROPERTY. (1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker. For purposes of this section, moneys or property shall not be considered entrusted to the broker or to any licensee representing the broker when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys or property to a third party, including, but not limited to, a title, an escrow or a trust company if upon transfer, the broker or its licensees have no right to exercise control over the safekeeping or disposition of said moneys or property.

(2) Unless otherwise instructed by the parties in writing to deposit entrusted moneys on a later day, immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account pursuant to section 54-2042, Idaho Code, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) A licensed real estate broker shall not be responsible for depositing moneys into the broker's real estate trust account, nor responsible for creating a real estate trust account with an approved depository as set forth in section 54-2042, Idaho Code, when the parties to the transaction have instructed the broker or its licensees, in writing, to transfer such moneys to a third party, including, but not limited to, a title, an escrow or a trust company. Provided however, a broker shall be responsible for maintaining a record of the time and date that said moneys or property was transferred from the broker to a third party.

(5) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

Approved April 8, 2009.

CHAPTER 135
(H.B. No. 190)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2050, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REQUIRED CONTENTS OF A SELLER REPRESENTATION AGREEMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2050, Idaho Code, be, and the same is hereby amended to read as follows:

54-2050. BROKERAGE REPRESENTATION AGREEMENTS -- REQUIRED ELEMENTS. All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

- (a) Conspicuous and definite beginning and expiration dates;
- (b) A legally enforceable description of the property to be bought or sold which sufficiently identifies the property so as to evidence an understanding of the parties as to the location of the real property. Nothing in this section shall be construed to require a legal description, nor a metes and bounds description of the property. Provided further, a representation agreement shall not be held invalid for lack of a legal description or a metes and bounds description;
- (c) Price and terms;
- (d) All fees or commissions; and

(e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative, and the date of such signature.

(2) Buyer representation agreements. Each buyer representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) All financial obligations of the buyer or prospective buyer, if any, including, but not limited to, fees or commissions;

(c) The manner in which any fee or commission will be paid to the broker; and

(d) Appropriate signatures and their dates.

(3) Prohibited provisions and exceptions -- Automatic renewal clauses.

No buyer or seller representation agreement shall contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement after the definite expiration date, unless the representation agreement states that it is completely nonexclusive and it contains no financial obligation, fee or commission due from the party signing the agreement.

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, copies that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct.

(5) Electronically generated agreements. To the extent the parties have agreed in writing, brokerage representation agreements with a buyer or seller that are electronically generated or transmitted, faxed or delivered in another method shall be deemed true and correct and enforceable as originals.

Approved April 8, 2009.

CHAPTER 136
(H.B. No. 191)

AN ACT

RELATING TO LIENS AND FORECLOSURES; AMENDING SECTION 45-1505, IDAHO CODE, TO DELETE THE REQUIREMENT THAT A CERTAIN NOTICE BE ON CANARY YELLOW OR SOME SIMILARLY COLORED YELLOW PAPER; AND AMENDING SECTION 45-1602, IDAHO CODE, TO DELETE THE REQUIREMENT THAT A CERTAIN NOTICE BE ON CANARY YELLOW OR SOME SIMILARLY COLORED YELLOW PAPER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 45-1505, Idaho Code, be, and the same is hereby amended to read as follows:

45-1505. FORECLOSURE OF TRUST DEED, WHEN. The trustee may foreclose a trust deed by advertisement and sale under this act if:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the deed is situated; and

(2) There is a default by the grantor or other person owing an obligation the performance of which is secured by the trust deed or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

(3) The trustee or beneficiary shall have (a) filed for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, a notice of default identifying the deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded, or a description of the trust property, and containing a statement that a breach of the obligation for which the transfer in trust is security has occurred, and setting forth the nature of such breach and his election to sell or cause to be sold such property to satisfy such obligation; and (b) mailed a copy of such notice by registered or certified mail, return receipt requested, to any person requesting such notice of record as provided in section 45-1511, Idaho Code. Service by mail in accordance with this subsection (3) shall be deemed effective at the time of mailing. In addition, the trustee shall mail the notice required in this section to any individual who owns an interest in property which is the subject of this section. Such notice shall be accompanied by and affixed to the following notice in twelve (12) point boldface type, on a separate sheet of ~~canary yellow or some similarly colored yellow~~ paper, no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have. Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

If the trust deed, or any assignments of the trust deed, are in the Spanish language, the written notice set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

(4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

SECTION 2. That Section 45-1602, Idaho Code, be, and the same is hereby amended to read as follows:

45-1602. CONTRACT NOTICE. (1) During the foreclosure period described in section 45-1506, Idaho Code, any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in section 45-525(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by and affixed to the following notice in twelve (12) point boldface type and on a separate sheet of ~~canary yellow or some similarly colored yellow~~ paper no smaller than eight

and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

You may find helpful information online. One excellent source is the Department of Housing and Urban Development (HUD) website which can be found at "<http://www.hud.gov/foreclosure/index.cfm>". HUD also maintains on its website a list of approved housing counselors who can provide free information to assist homeowners with financial problems. Another good source of information is found at the Office of the Attorney General's website at "<http://www2.state.id.us/ag/>".

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

(2) If during the foreclosure period described in section 45-1506, Idaho Code, any contract or agreement that involves the transfer of any interest in residential real property, as defined in section 45-525(5) (b), Idaho Code, was solicited, negotiated, or represented to the consumer in the Spanish language, the written notice to be provided to the consumer and set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

Approved April 8, 2009.

CHAPTER 137
(H.B. No. 213)

AN ACT

RELATING TO VESSELS; AMENDING CHAPTER 70, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-7008A, IDAHO CODE, TO PROVIDE FOR ADDITIONAL FEES FOR SPECIFIED VESSELS, TO PROVIDE FOR CERTAIN STICKERS, TO PROVIDE FOR COLLECTION AND DEPOSIT OF FEES IN THE INVASIVE SPECIES FUND, TO DEFINE A TERM AND TO PROVIDE EXCEPTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 70, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-7008A, Idaho Code, and to read as follows:

67-7008A. ADDITIONAL FEES -- DEPOSIT INTO INVASIVE SPECIES FUND. (1) In addition to any other moneys or fees collected pursuant to the provisions

of section 67-7008, Idaho Code, or any other provision of chapter 70, title 67, Idaho Code, all vessels shall pay an additional fee each calendar year as follows:

(a) Motorized vessels:

(i) Ten dollars (\$10.00) per vessel registered in the state of Idaho prior to launch into the public waters of the state;

(ii) Twenty dollars (\$20.00) per vessel registered outside the state of Idaho prior to launch into the public waters of the state.

(b) Nonmotorized vessels: Five dollars (\$5.00) per vessel prior to launch into the public waters of the state.

(c) Commercial outfitters with nonmotorized fleets exceeding five (5) vessels shall be afforded a prorated group rate of thirty dollars (\$30.00) for six (6) to ten (10) vessels; fifty-five dollars (\$55.00) for eleven (11) to twenty (20) vessels; and one hundred dollars (\$100) for twenty-one (21) or more vessels.

(2) Upon payment of the fee as provided in this section, the payor shall be issued a protection against invasive species sticker that shall be displayed on the vessel in a manner as prescribed by the rules of the department. Stickers shall be considered in full force and effect through December 31 of the year of issue.

(3) Fees shall be collected by the department or authorized vendor. Fees collected pursuant to this section shall be deposited in the invasive species fund established in section 22-1911, Idaho Code. For the purpose of this section, "vessel" is defined in section 67-7003(22), Idaho Code. All vessels are subject to the provisions of this section, with the exception of small rafts and other inflatable vessels less than ten (10) feet in length.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 8, 2009.

CHAPTER 138
(S.B. No. 1061)

AN ACT

RELATING TO SNOWMOBILES; AMENDING SECTION 67-7112, IDAHO CODE, TO PROVIDE THAT CERTAIN VEHICLES SHALL NOT BE ALLOWED TO OPERATE ON GROOMED SNOWMOBILE TRAILS, TO PROVIDE AN EXCEPTION, TO PROVIDE A PENALTY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-7112, Idaho Code, be, and the same is hereby amended to read as follows:

67-7112. GROOMED SNOWMOBILE TRAILS. Any all-terrain vehicle operating on groomed snowmobile trails during the winter snowmobiling season when the trails are groomed shall be registered as a snowmobile under the provisions of section 67-7103, Idaho Code. Counties shall have the option to allow all-terrain vehicles, if registered, to use snowmobile trails in the county. No other vehicles shall operate on groomed snowmobile trails unless specifically allowed by the county. Violation of the provisions of this section shall be an infraction.

Approved April 8, 2009.

CHAPTER 139
(S.B. No. 1046)

AN ACT

RELATING TO CRIME VICTIMS COMPENSATION; AMENDING SECTION 72-1025, IDAHO CODE, TO INCREASE THE MINIMUM FINE OR REIMBURSEMENT IMPOSED FOR EACH FELONY COUNT, TO INCREASE THE FINE OR REIMBURSEMENT IMPOSED FOR EACH MISDEMEANOR COUNT AND TO INCREASE THE MINIMUM FINE OR REIMBURSEMENT IMPOSED FOR ANY SEX OFFENSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1025, Idaho Code, be, and the same is hereby amended to read as follows:

72-1025. FINES -- REIMBURSEMENTS -- PRIORITY -- DISPOSITION. (1) In addition to any other fine which may be imposed upon each person found guilty of criminal activity, the court shall impose a fine or reimbursement according to the following schedule, unless the court orders that such fine or reimbursement be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court:

(a) For each conviction or finding of guilt of each felony count, a fine or reimbursement of not less than ~~fifty~~ seventy-five dollars (~~\$50~~75.00) per felony count;

(b) For each conviction or finding of guilt of each misdemeanor count, a fine or reimbursement of ~~twenty-five~~ thirty-seven dollars (~~\$25~~37.00) per misdemeanor count;

(c) In addition to any fine or reimbursement ordered under subsection (a) or (b) above, the court shall impose a fine or reimbursement of not less than ~~two~~ three hundred dollars (~~\$2~~300) per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses pursuant to sections 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108, 18-6605 and 18-6608, Idaho Code.

(2) The fine or reimbursement imposed under the provisions of this section shall have priority over all other judgments of the court, except an order to pay court costs.

(3) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines or reimbursements imposed under the provisions of this section shall be paid into the crime victims compensation account.

Approved April 8, 2009.

CHAPTER 140
(S.B. No. 1138)

AN ACT

RELATING TO LOW-INCOME PROPERTIES; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 2, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-205A, IDAHO CODE, TO PROVIDE FOR MARKET VALUE FOR ASSESSMENT PURPOSES OF SECTION 42 LOW-INCOME PROPERTIES AND TO PROVIDE PROCEDURES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to establish a uniform valuation method for Section 42 low-income properties throughout Idaho. In doing so, the following are to be considered:

- (1) To ensure equitable treatment for all property owners, without creating any added favor or penalty for Section 42 low-income property owners;
- (2) To recognize recent court decisions that both tax credits and actual restricted rents must be valued under current law;
- (3) To provide fair valuations using consistent and predictable appraisal methods in valuing Section 42 low-income properties throughout the economic life of the property;
- (4) To employ the use of recognized appraisal techniques;
- (5) To give due consideration to all three approaches to values; and
- (6) To provide that the assessed valuation of Section 42 low-income property not exceed the assessed value of comparable rental housing of the same quality, condition and location not receiving Section 42 low-income tax credits.

SECTION 2. That Chapter 2, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-205A, Idaho Code, and to read as follows:

63-205A. ASSESSMENT - MARKET VALUE FOR ASSESSMENT PURPOSES OF SECTION 42 LOW-INCOME PROPERTIES. (1) Section 42 of the Internal Revenue Code and related regulations govern the housing tax credit established under the 1986 tax reform act, as amended, and provides an incentive for developers to provide safe and sanitary housing for individuals and families earning no more than sixty percent (60%) of the area median income as determined by the U.S. department of housing and urban development (HUD), which income and rent restrictions remain in place as provided for in the tax credit regulatory agreement between the owner and the Idaho housing and finance association.

(2) The market value for assessment purposes of section 42 low-income properties shall be determined by the county assessor using the following criteria:

(a) The sales comparison approach using similar rent restricted properties, the cost approach, and the income approach, shall be considered in valuing section 42 low-income properties. The cost approach shall include an economic obsolescence factor associated with the income and rent restrictions provided with each development's tax credit regulatory agreement with the Idaho housing and finance association. The three (3) approaches will be reconciled into a single property value.

(b) Net operating income to be capitalized in the income approach shall not include the amount of housing tax credits. However, the amount of such credits shall be added to the capitalized net operating income using one (1) of the following procedures:

(i) Except as provided in subsection (2) (b) (ii), of this section, for properties for which housing tax credits have been received prior to January 1, 2009, and for properties subject to new regulatory agreements on or after January 1, 2009, the total dollar amount of such credits shall be divided by the total number of years in the regulatory agreement;

(ii) For properties for which housing tax credits originally were received, but which are no longer receiving such credits as of January 1, 2009, no amount shall be added; or

(iii) For properties previously receiving housing tax credits, but subject to a new regulatory agreement on or after January 1, 2009, the total amount of housing tax credits pursuant to the new agreement shall be divided by the number of years in the new regulatory agreement. This amount shall supersede and be substituted for any amount previously calculated.

Net operating income shall be capitalized into value using a market derived capitalization rate. The net operating income shall be reduced by costs customary to section 42 operations, including normalized oper-

ating expenses plus all compliance, audit, asset management and other fees, but not general partner fees, as well as those costs set forth in each development's tax credit regulatory agreement with the Idaho housing and finance association.

(c) The Idaho state tax commission shall gather market data to determine market derived capitalization rates for section 42 low-income properties from section 42 property sales. Determination of the market derived capitalization rates for section 42 low-income property sales shall include both actual net operating income and calculated tax credit income consistent with the formula in subsection (2) (b) of this section. The Idaho state tax commission shall then make the information available to each county assessor. If fewer than three (3) comparable sales of section 42 low-income properties are available, then a capitalization rate derived from properties with no federal project based assistance shall be used. As used in this section, "comparable" shall mean section 42 low-income properties with no federal project based assistance. A sale of a section 42 low-income property shall not be considered as a comparable sale if the buyer of that property receives a new allocation of section 42 tax credits from the Idaho housing and finance association.

(d) Beginning in 2010, the owners of properties described in this section shall provide to the Idaho state tax commission no later than April 1 of each year, such financial statements from the prior year as are customarily prepared in the ownership and operation of any section 42 property. For 2009, said financial statements shall be provided no later than May 1. In addition, no later than May 1 of 2009 or, for new developments with housing tax credits or new allocations, by April 1 of the first year of any tax credit regulatory agreement, the Idaho housing and finance association shall provide to the Idaho state tax commission statements ascertaining the dollar amounts of housing tax credits that have been allocated to each section 42 property, the year such credits were first paid, and the total number of years in the regulatory agreement. The Idaho state tax commission shall then make the financial statements and tax credit information required under this section available to each county assessor. If such information is not made available to the Idaho state tax commission and county assessors, each county shall substitute market rent apartment derived expenses and income for section 42 low-income properties.

(e) The Idaho state tax commission shall have the authority to promulgate rules dealing with the enactment and enforcement of this section.

(f) If the use of the income approach as described in subsection (2) (b) of this section results in an assessed value lower than would be obtained if the income approach in subsection (2) (b) of this section were not used, the difference will be exempt.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2009.

Approved April 8, 2009.

CHAPTER 141

(S.B. No. 1053, As Amended)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-401B, IDAHO CODE, TO REVISE PROVISIONS RELATING TO APPLICATIONS FOR MOTOR VEHICLE REGISTRATION; AND AMENDING SECTION 49-504, IDAHO CODE, TO REVISE PROVISIONS RELATING TO APPLICATIONS FOR CERTIFICATE OF TITLE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-401B, Idaho Code, be, and the same is hereby amended to read as follows:

49-401B. APPLICATION FOR REGISTRATION -- RECEIPT FOR FEE -- RECORD OF APPLICANTS. (1) Application for the registration of a vehicle required to be registered under the provisions of section 49-401A, Idaho Code, shall be made to the assessor or the department as specified in that section, by the owner upon the appropriate form. Every application shall contain the owner's Idaho driver's license number, Idaho identification card number, or social security number. In the case of a business, the employer tax identification number is required. Every application shall also contain the owner's true and full legal name. In the event that the owner does not possess a social security number, Idaho driver's license number, or Idaho identification card number, the owner shall present written documentation sufficient to the department to determine that no social security number has been issued. Such application must be signed by the owner and contain his residence address and a brief description of the vehicle to be registered, including the name of the maker, the type of fuel used, and the identification number. Upon registration of a new vehicle, the application shall also show the date of sale by the manufacturer or dealer to the person first operating such vehicle. The application shall contain any other information as may be required by the department. The assessor shall issue to the applicant a receipt for any fee paid. Social security numbers collected shall not appear on certificates of registration, and all applications on file shall be exempt from disclosure, except as provided in sections 49-202, 49-203 and 49-203A, Idaho Code.

(2) The assessor shall record on a form prescribed and furnished by the department, the names of all owners of vehicles residing in the county who make application for registration, together with the amounts of the fees paid by such owners.

(3) When application for registration is made by any motor carrier, the assessor or the department shall require each such applicant to execute a certification of safety compliance.

(4) Vehicles registered under the proportional registration provisions of section 49-435, Idaho Code, shall be registered by the department.

(5) Every owner of a vehicle registered by a county assessor shall give his principal physical domicile residence or domicile address or the business' physical principal address to the assessor so that the proper county can be entered upon the registration. Failure to do so shall be unlawful. The department shall then attribute the registration, and all fees to be apportioned to the highway distribution account, to the county of residence regardless of the county in which the registration occurred. Fees imposed under the provisions of sections 40-827 and 40-1416, Idaho Code, shall be separately identified and accounted for, and paid to the highway district for which collected. For the purposes of vehicle registration, a person is an actual and permanent resident of the county in which he has his principal residence or domicile. A principal residence or domicile shall not be a person's workplace, vacation, or part-time residence.

(6) A violation of the provisions of this section shall be an infraction.

SECTION 2. That Section 49-504, Idaho Code, be, and the same is hereby amended to read as follows:

49-504. APPLICATIONS TO DEPARTMENT FOR CERTIFICATES -- PROCEDURE -- IDENTIFICATION NUMBERS. (1) Application for a certificate of title shall be made upon a form furnished by the department and shall contain the owner's

Idaho driver's license number, Idaho identification card number or social security number. In the case of a business, the employer tax identification number is required. Every application shall also contain the owner's true and full legal name. In the event that the owner does not possess a social security number, Idaho driver's license number, or Idaho identification card number, the owner shall present written documentation sufficient to the department to determine that no social security number has been issued. The form must contain the owner's physical domicile address or in the case of a business, the business' physical address and any mailing address if different from the physical address. Such application must be signed by the owner and contain a full description of the vehicle including the make, identification numbers, and the odometer reading at the time of sale or transfer, and whether the vehicle is new or used, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, and the name and address of the person to whom the certificate of title shall be delivered, and any other information as the department may require. The application shall be filed with the department, and if a certificate of title has previously been issued for that vehicle in this state, shall be accompanied by the certificate of title duly assigned, unless otherwise provided for in this chapter. The department may promulgate rules to provide for exceptions to the odometer requirement. Social security numbers collected shall not appear on certificates of title and all applications on file shall be exempt from disclosure, except as provided in section 49-202, 49-203 and 49-203A, Idaho Code.

(2) If a certificate of title has not previously been issued for the vehicle in this state, the application, unless otherwise provided for in this chapter, shall be accompanied by a proper bill of sale or a duly certified copy thereof, or by a certificate of title, bill of sale or other evidence of ownership required by the law of any other state from which the vehicle was brought into this state, and a vehicle identification number inspection completed by any city, county or state peace officer or other special agent authorized by the department.

(3) In the case of a new vehicle being titled for the first time, no certificate of title or registration shall be issued unless the application is indorsed by a franchised new vehicle dealer licensed to sell a new vehicle. Each application shall be accompanied by a manufacturer's certificate of origin or manufacturer's statement of origin executed by the manufacturer and delivered to his agent or his franchised vehicle dealer. The certificate or statement of origin shall be in a form prescribed by the board and shall contain the year of manufacture or the model year of the vehicle, the manufacturer's vehicle identification number, the name of the manufacturer, the number of cylinders, a general description of the body, if any, and the type or model. Upon sale of a new vehicle, the manufacturer, his agent or franchised dealer shall execute and deliver to the purchaser an assignment of the certificate or statement, together with any lien or encumbrance to which the vehicle is subject.

(4) The department shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The department shall maintain an identification numbers index of registered vehicles, and upon receiving an application for a certificate of title, shall first check the identification number shown in the application against the index. The department, when satisfied that the applicant is the owner of the vehicle and that the application is in proper form, shall issue in the name of the owner of the vehicle a certificate of title bearing a title number, the date issued and a description of the vehicle as determined by the department, together with a statement of the owner's title and of all liens or encumbrances upon the vehicle, and whether possession is held by the owner under a lease, contract or conditional sale, or other like agreement.

(5) In all cases of transfer of vehicles the application for certificates of title shall be filed within thirty (30) calendar days after the delivery of the vehicles. Licensed dealers need not apply for certificate of title for vehicles in stock or when they are acquired for stock purposes.

(6) In the case of the sale of a vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. If a lien is to be recorded, the title documentation as required in this section shall be submitted to the department by the dealer or the lienholder upon application signed by the purchaser. A copy of this application shall be given to the purchaser to be used as a seventy-two (72) hour temporary permit. In all other cases the certificates shall be obtained by the purchaser and the seller's bill of sale shall serve as a seventy-two (72) hour permit. The seventy-two (72) hour time period for temporary permits shall be calculated excluding weekend days and legal holidays observed by the state of Idaho. This temporary permit allows operation of any noncommercial vehicle or unladen commercial vehicle or vehicle combination without license plates for the period of time specified in the permit. A laden commercial vehicle or vehicle combination may also operate without license plates for the period of time specified in the temporary permit provided that the owner or operator has also obtained a permit issued under the provisions of section 49-432, Idaho Code.

(7) If the vehicle has no identification number, then the department shall designate an identification number for that vehicle at the time of issuance of the certificate of title. The identification number shall be permanently affixed to or indented upon the frame of the vehicle and legibly maintained by the owner at all times while a certificate of title to the vehicle shall be issued and outstanding.

Approved April 9, 2009.

CHAPTER 142
(S.B. No. 1097)

AN ACT

RELATING TO PUBLIC HIGHWAYS AND UTILITIES; AMENDING CHAPTER 2, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-210, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE THAT CERTAIN PUBLIC HIGHWAY AGENCIES OR ANY PRIVATE PARTY WORKING WITH SUCH AGENCY ON A PROJECT THAT MAY REQUIRE RELOCATION OF UTILITY FACILITIES SHALL PERMIT THE AFFECTED UTILITY TO PARTICIPATE IN PROJECT DEVELOPMENT MEETINGS, TO PROVIDE FOR WRITTEN NOTICE TO THE AFFECTED UTILITY AND TO PROVIDE FOR A MEETING, TO PROVIDE THAT CERTAIN PUBLIC HIGHWAY AGENCIES AND AFFECTED UTILITIES SHALL USE BEST EFFORTS TO ELIMINATE OR MINIMIZE CERTAIN COSTS, TO PROVIDE THAT FAILURE BY THE AFFECTED UTILITY TO RESPOND TO WRITTEN NOTICE NOT AFFECT THE PUBLIC HIGHWAY AGENCY'S ABILITY TO PROCEED WITH THE PROJECT, TO PROVIDE DEFINITIONS AND TO PROVIDE LIMITS TO APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-210, Idaho Code, and to read as follows:

40-210. LEGISLATIVE INTENT -- UTILITY FACILITIES -- COORDINATED RELOCATION POLICIES -- DEFINITIONS. (1) Public highways are intended principally for public travel and transportation; however, the public highways and the public right-of-way used in connection with the public highways are also

lawfully used in connection with uses associated with utility purposes necessary to provide utility services to the public. Without making use of public highways and their associated rights-of-way, the utility facilities and services could not reach or economically serve the residents of the state of Idaho.

Therefore, it is the intent of the legislature that the public highway agencies and utilities engage in proactive, cooperative coordination of highway projects through a process that will attempt to effectively minimize costs, limit the disruption of utility services, and limit or reduce the need for present or future relocation of such utility facilities.

(2) In furtherance of the legislative intent expressed in subsection (1) of this section, public highway agencies engaged in a public highway project that may require the relocation of utility facilities, or any private party working with a public highway agency on a project that may require the relocation of utility facilities in connection therewith, shall permit the affected utility to participate in project development meetings. In addition, at the beginning of the preliminary design phase of the project, the public highway agency shall, upon giving written notice of not less than thirty (30) days to the affected utility, meet with the utility for the purpose of allowing the utility to review plans, understand the goals, objectives and funding sources for the proposed project, provide and discuss recommendations to the public highway agency that would reasonably eliminate or minimize utility relocation costs, limit the disruption of utility services, eliminate or reduce the need for present or future utility facility relocation, and provide reasonable schedules to enable coordination of the highway project construction and such utility facility relocation as may be necessary. While recognizing the essential goals and objectives of the public highway agency in proceeding with and completing a project, the parties shall use their best efforts to find ways to (a) eliminate the cost to the utility of relocation of the utility facilities, or (b) if elimination of such costs is not feasible, minimize the relocation costs to the maximum extent reasonably possible.

(3) If a utility has received notice of the preliminary design meeting as set forth in subsection (2) of this section and has failed to respond or participate in meetings described therein, such failure to respond or participate in such meetings shall not in any way affect the ability of the public highway agencies to proceed with the project design or construction.

(4) As used in this section:

(a) "Utility" means an entity comprised of any person, private company, public agency or cooperative owning and/or operating utility facilities.

(b) "Utility facility" means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, cable television, electricity, light, heat, gas, oil, crude products, ore, water, steam, waste or storm water not connected with highway drainage and other similar commodities.

(5) No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other political subdivision having jurisdiction over the public right-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of the applicable local ordinance or regulations governing the use of the public right-of-way.

Approved April 9, 2009.

CHAPTER 143
(S.B. No. 1109, As Amended)

AN ACT

RELATING TO PHARMACISTS; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1760, IDAHO CODE, TO PROVIDE A SHORT TITLE; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1761, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1762, IDAHO CODE, TO PROVIDE FOR THE IDAHO LEGEND DRUG DONATION ACT; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1763, IDAHO CODE, TO PROVIDE FOR THE BOARD'S DUTIES AND POWERS; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1764, IDAHO CODE, TO PROVIDE IMMUNITY FROM LIABILITY; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1765, IDAHO CODE, TO PROVIDE FOR AN EXEMPTION FROM THE IDAHO WHOLESALE DRUG DISTRIBUTION ACT; AMENDING SECTION 54-1752, IDAHO CODE, TO FURTHER DEFINE A TERM; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1760, Idaho Code, and to read as follows:

54-1760. SHORT TITLE. Sections 54-1760 through 54-1765, Idaho Code, shall be known and may be cited as the "Idaho Legend Drug Donation Act."

SECTION 2. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1761, Idaho Code, and to read as follows:

54-1761. DEFINITIONS. As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Donating entity" means pharmacies, hospitals, nursing homes, drug manufacturers and wholesale distributors.

(2) "Legend drug" has the same meaning as provided in section 54-1705(28), Idaho Code.

(3) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(4) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code.

SECTION 3. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1762, Idaho Code, and to read as follows:

54-1762. IDAHO LEGEND DRUG DONATION ACT. (1) The board of pharmacy shall establish and implement a program through which legend drugs may be transferred from a donating entity that elects to participate in the program for the purpose of distribution to a charitable clinic's or center's pharmacy or to a qualifying charitable center or clinic acting in consultation with a pharmacist for donation to qualifying medically indigent patients.

(2) A qualifying charitable center or clinic in consultation with a pharmacist shall establish procedures consistent with the Idaho legend drug donation act and rules promulgated thereunder.

(3) The acceptance and distribution of legend drugs for use in the program shall be subject to the following requirements:

(a) Only drugs in the original, sealed and tamper evident packaging shall be accepted and dispensed, except that drugs packaged in single unit doses may be accepted and distributed when the outside packaging is open and the single unit dose packaging is intact.

(b) Only drugs that bear a clear and verifiable lot number and expiration date may be accepted and dispensed. However, drugs that bear an expiration date that is less than three (3) months from the date the drug is donated shall not be accepted and dispensed.

(c) Drugs and other substances provided in schedules II through V of article II, chapter 27, title 37, Idaho Code, shall not be accepted and shall not be dispensed.

(d) A drug shall not be accepted or dispensed if the person accepting or dispensing the drug has reason to believe that the drug has been adulterated.

(4) The following entities that are licensed or registered in the state of Idaho may donate legend drugs:

(a) Pharmacies;

(b) Hospitals and nursing homes;

(c) Drug manufacturers; and

(d) Wholesale distributors.

(5) The following entities may accept legend drugs:

(a) A qualifying charitable clinic's or center's pharmacy; or

(b) A qualifying charitable center or clinic in consultation with a pharmacist licensed in the state of Idaho.

(6) Any qualifying charitable clinic or center that participates in the program may dispense drugs donated under the Idaho legend drug donation act to persons who are medically indigent residents of the state of Idaho.

(7) Any qualifying charitable clinic or center dispensing legend drugs shall:

(a) Comply with the provisions of the Idaho legend drug donation act and all rules promulgated thereunder;

(b) Comply with all applicable federal and state laws related to the storage and distribution of drugs;

(c) Inspect all drugs prior to dispensing to determine that such drugs have not been adulterated; and

(d) Dispense drugs only pursuant to a valid prescription.

(8) Participation in the program is voluntary and nothing in the Idaho legend drug donation act shall require any person or entity to participate in the program.

(9) Nothing in the Idaho legend drug donation act shall prohibit or restrict the return of unused prescription drugs to the Idaho medicaid program pursuant to rules promulgated by the Idaho department of health and welfare.

SECTION 4. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1763, Idaho Code, and to read as follows:

54-1763. BOARD DUTIES AND POWERS. (1) The board of pharmacy shall adopt rules necessary for the implementation and enforcement of the program established under the Idaho legend drug donation act and for the enforcement of board rules promulgated thereunder, including:

(a) Standards and procedures for the transfer, acceptance and safe storage of donated drugs;

(b) Standards and procedures for inspecting donated drugs to ensure that the drugs are in compliance with the provisions of the Idaho legend drug donation act and all federal and state product integrity standards and regulations;

- (c) Standards and procedures for the distribution of donated drugs to qualifying charitable centers or clinics;
- (d) Standards and procedures for the dispensing of donated drugs to qualifying medically indigent patients; and
- (e) Any other standards and procedures the board deems appropriate or necessary to implement or enforce the provisions of the Idaho legend drug donation act.

(2) The board shall provide technical assistance to entities that participate in the program.

SECTION 5. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1764, Idaho Code, and to read as follows:

54-1764. IMMUNITY FROM LIABILITY. Any entity that lawfully and voluntarily participates by donating, accepting, distributing or dispensing legend drugs under the Idaho legend drug donation act shall be immune from liability for any civil action arising out of the provision of such action. This section shall not extend immunity to the participating entity for any acts constituting intentional, willful or grossly negligent conduct or to acts by a participating entity that are outside the scope of practice authorized by the entity's licensure, certification or registration.

SECTION 6. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1765, Idaho Code, and to read as follows:

54-1765. EXEMPT FROM THE IDAHO WHOLESALE DRUG DISTRIBUTION ACT. Any person or entity lawfully donating, accepting, distributing or dispensing legend drugs under the Idaho legend drug donation act shall be exempt from the provisions of the Idaho wholesale drug distribution act as provided in sections 54-1751 through 54-1759, Idaho Code.

SECTION 7. That Section 54-1752, Idaho Code, be, and the same is hereby amended to read as follows:

54-1752. DEFINITIONS. As used in sections 54-1751 through 54-1759, Idaho Code:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing

of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third-party logistics provider or from that manufacturer to that manufacturer's exclusive distributor, either directly or by drop shipment, to:

(a) A pharmacy to a patient;

(b) Other designated persons authorized by law to dispense or administer such drug to a patient;

(c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.

(11) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(12) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(13) "Repackager" means a person who repackages.

(14) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(15) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:

- (a) Manufacturers;
- (b) Repackagers;
- (c) Own-label distributors;
- (d) Private-label distributors;
- (e) Jobbers;
- (f) Brokers;
- (g) Warehouses, including manufacturers' and distributors' warehouses;
- (h) Manufacturer's exclusive distributors;
- (i) Authorized distributors of record;
- (j) Drug wholesalers or distributors;
- (k) Independent wholesale drug traders;
- (l) Specialty wholesale distributors;
- (m) Third party logistics providers;
- (n) Retail pharmacies that conduct wholesale distribution; and
- (o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.

(16) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- (b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.
- (c) The distribution of prescription drug samples by manufacturers' representatives.
- (d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.
- (e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.
- (f) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.
- (~~g~~) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.
- (~~g~~h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(~~hi~~) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.

(~~ij~~) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(~~jk~~) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.

SECTION 8. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Approved April 9, 2009.

CHAPTER 144
(S.B. No. 1122)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1351, IDAHO CODE, TO REVISE PROVISIONS RELATING TO OPTIONAL RETIREMENT ALLOWANCES; AMENDING SECTION 59-1352, IDAHO CODE, TO CLARIFY A REQUIREMENT OF ELIGIBILITY FOR DISABILITY RETIREMENT; AND AMENDING SECTION 59-1355, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-1351, Idaho Code, be, and the same is hereby amended to read as follows:

59-1351. CONVERSION OF SERVICE RETIREMENT OR EARLY RETIREMENT ALLOWANCES INTO OPTIONAL RETIREMENT ALLOWANCES -- FORM OF OPTIONAL RETIREMENT. (1) The service retirement allowance, or the early retirement allowance of a member who, at time of retirement, so elects shall be converted into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance may take one (1) of the forms listed below and shall be in lieu of all other benefits under this chapter except that the provisions of section 59-1361(2), Idaho Code, shall be applicable:

(a) Option 1 provides a reduced retirement allowance payable during the lifetime of the retired member, and a continuation thereafter of such reduced retirement allowance during the lifetime of the member's named contingent annuitant.

(b) Option 2 provides a reduced retirement allowance payable during the lifetime of the retired member, and a continuation thereafter of one-half (1/2) of such reduced retirement allowance during the lifetime of the member's named contingent annuitant.

(c) Option 3, which is available only if the member retires before the date of the social security normal retirement age for that member, provides an increased retirement allowance until such date and a reduced retirement allowance thereafter, the difference between the two (2) amounts approximately equaling the governmental old-age benefit becoming payable at such date as estimated by the board.

(d) Option 4, which is available only if the member retires before the date of the social security normal retirement age for that member, provides either an adjusted option 1 (option 4A) or option 2 (option 4B) retirement allowance until such date and a reduced retirement allowance thereafter, the difference between the two (2) amounts approximately equaling the governmental old-age benefit becoming payable at such date as estimated by the board. The adjusted retirement allowance shall be paid to the retired member during the member's lifetime and the appropriate continuation amount of the adjusted allowance to the member's named contingent annuitant for life thereafter.

(2) Should the named contingent annuitant under option 1 or option 2 either predecease a member retiring on or after October 1, 1992, or waive all survivor benefits pursuant to a domestic retirement order approved under section 59-1320, Idaho Code, upon notification to the board, the member's benefit on the first day of the month following the death of the contingent annuitant or approval of the domestic retirement order, as applicable, will thereafter become an allowance calculated pursuant to section 59-1342 or 59-1346, Idaho Code, whichever was applicable on the date of retirement, in addition to any postretirement allowance adjustments which may have accrued from that time. Should the named contingent annuitant under option 4 either predecease the member, or waive all survivor benefits pursuant to a domestic retirement order approved under section 59-1320, Idaho Code, upon notification to the board, the member's benefit on the first day of the month following the contingent annuitant's death or approval of the domestic retirement order, as applicable will thereafter become the option 3 allowance to which the member would have been entitled as of the date of the annuitant's death, or approval of the domestic retirement order, as applicable. The benefit changes under this subsection shall be available only to members whose last contribution was made after June 30, 1992.

(3) Option 1 or 2 may not be chosen if initial monthly payments of less than twenty dollars (\$20.00) per month would result would be less than that amount set forth in, or pursuant to, section 59-1343, Idaho Code.

(4) Application for any optional retirement allowance shall be in writing, duly executed and filed with the board. Such application shall contain all information required by the board, including such proofs of age as are deemed necessary by the board.

(5) A retirement option elected at the time of retirement as provided for in this section may not be changed except by written notice to the retirement board no later than five (5) business days after the receipt of the first retirement allowance.

(6) Not later than one (1) year after the marriage of a retired member, the member may elect option 1, 2 or 4 to become effective one ninety (190) year days after the date of such election, provided the member's spouse is named as a contingent annuitant, and either:

(a) The member was not married at the time of the member's retirement; or

(b) The member earlier elected option 1, 2, 4A or 4B, having named the member's spouse as contingent annuitant, and said spouse has died or has waived all survivor benefits as provided in subsection (2) of this section. ~~The retirement allowance to be converted in such a case is that currently being paid.~~

Should a member make an election under this subsection (6), upon notification to the board, the member's benefit on the first day of the month follow-

ing the effective date of the election will thereafter become the optional retirement allowance elected, calculated as of the date of retirement pursuant to subsection (1) of this section, in addition to any postretirement allowance adjustments that may have accrued from that time.

SECTION 2. That Section 59-1352, Idaho Code, be, and the same is hereby amended to read as follows:

59-1352. ELIGIBILITY FOR DISABILITY RETIREMENT. (1) An active member with five (5) years of membership service is eligible for disability retirement. ~~if the member becomes disabled after at least five (5) years of membership service.~~

(2) A police officer member, general member, or a paid firefighter hired on or after July 1, 1993, who is not eligible for service retirement is eligible for disability retirement if ~~the member becomes~~ disabled, as provided in section 59-1302(12), Idaho Code, on or after the first day of employment as a result of bodily injury or disease from an occupational cause.

(3) Only active members, and inactive members whose date of last contribution as an active member was less than one (1) year prior to the date of application, are eligible to apply for disability retirement.

SECTION 3. That Section 59-1355, Idaho Code, be, and the same is hereby amended to read as follows:

59-1355. ~~POST-RETIREMENT~~ POSTRETIREMENT ALLOWANCE ADJUSTMENTS. (1) Each retirement allowance payment shall, subject to the provisions of this section, equal the inflation factor for the adjustment year of payment multiplied by the amount of the retirement allowance payment for March of the previous year. During any adjustment year for which the ratio of the consumer price index for the index month of the previous year to the consumer price index for the index month of the second previous year is not more than one hundred one ~~per-cent percent~~ (101%), the inflation factor shall be such ratio or ninety-four ~~per-cent percent~~ (94%), whichever is greater, which inflation factor shall not be subject to legislative approval. Otherwise the inflation factor during such adjustment year shall be one hundred one ~~per-cent percent~~ (101%), except that the board, with legislative approval, may put into effect a greater factor which is no more than such ratio or one hundred six ~~per-cent percent~~ (106%), whichever is smaller, if it finds the value of the actuarial assets of the system to be no less than its actuarial liabilities, including those created by the increased factor. The actuarial assets comprise the sum of the actuarial present value of the amortization payments determined in accordance with the requirements of section 59-1322(5), Idaho Code, plus the amounts determined in paragraphs (e)(ii), (e)(iii), (e)(iv), (e)(v) and (g) of section 59-1322(4), Idaho Code. The actuarial liabilities are as defined in paragraph (e)(i) of section 59-1322(4), Idaho Code. The board's proposed inflation factor for any adjustment year shall be communicated by letter to the legislature by not later than January 15 prior to that year.

(2) During an adjustment year following one in which there was at least one (1) retirement allowance payment but none in March, each retirement allowance payment shall equal the partial factor multiplied by the amount of the monthly retirement allowance payment in the earlier year. The partial factor shall equal 1.000 plus one-twelfth (1/12) of the product of the number of months in the earlier adjustment year in which member contributions were not made and the excess, if any, of the inflation factor for the later year over 1.000.

(3) During an adjustment year following one in which there was no retirement allowance payment, each retirement allowance payment shall equal

the initial retirement allowance multiplied by the bridging factor between the first day of the month following the member's final contribution and the date of the first retirement allowance payment.

(a) Except as provided in paragraph (b) of this subsection, the bridging factor between any two (2) dates shall be the ratio of the amounts of retirement allowance payable on the two (2) dates for any member who retired on the earlier date immediately following his final contribution.

(b) For any member not making a final contribution subsequent to 1974 whose initial retirement allowance is a minimum allowance provided in section 59-1342(1)(b) or 59-1342(2)(b), Idaho Code, the bridging factor shall be computed as if the member had made his final contribution in 1974.

(4) The consumer price index shall be that for all urban consumers published by the bureau of labor statistics, United States department of labor.

(5) The adjustments provided under this section shall in no event reduce a benefit payment below its initial amount.

(6) An adjustment year shall extend from March through the following February. The index month is October for adjustment years commencing before March, 1990, and is August for subsequent adjustment years.

(7) If, by the forty-fifth day of any regular legislative session, the legislature has not adopted a concurrent resolution rejecting or amending the proposed adjustments of the board allowed in subsections (1) and (8) of this section, such action on the part of the legislature shall constitute legislative approval of the board's adjustments.

(8) Notwithstanding other provisions of this section, the board may grant a postretirement allowance adjustment for any previous year or years up to the full amount of the increase in the consumer price index for that year or those years, as provided in subsection (7) ~~above~~ of this section.

Approved April 9, 2009.

CHAPTER 145
(S.B. No. 1123)

AN ACT

RELATING TO PUBLIC UTILITY RATES; AMENDING CHAPTER 5, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-541, IDAHO CODE, TO DEFINE A TERM, TO PROVIDE THAT PUBLIC UTILITY COMMISSION BINDING RATEMAKING TREATMENTS ARE APPLICABLE WHEN COSTS OF A NEW ELECTRIC GENERATION FACILITY ARE INCLUDED IN RATES, TO PROVIDE PROCEDURES AND TO PROVIDE FOR RULES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 5, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-541, Idaho Code, and to read as follows:

61-541. BINDING RATEMAKING TREATMENTS APPLICABLE WHEN COSTS OF A NEW ELECTRIC GENERATION FACILITY ARE INCLUDED IN RATES. (1) As used in this section, "certificate" means a certificate of convenience and necessity issued under section 61-526, Idaho Code.

(2) A public utility that proposes to construct, lease or purchase an electric generation facility or transmission facility, or make major additions to an electric generation or transmission facility, may file an application with the commission for an order specifying in advance the ratemaking treatments that shall apply when the costs of the proposed facility are included in the public utility's revenue requirements for ratemaking purposes. For purposes of this section, the requested ratemaking treatments

may include nontraditional ratemaking treatments or nontraditional cost recovery mechanisms.

(a) In its application for an order under this section, a public utility shall describe the need for the proposed facility, how the public utility addresses the risks associated with the proposed facility, the proposed date of the lease or purchase or commencement of construction, the public utility's proposal for cost recovery, and any proposed ratemaking treatments to be applied to the proposed facility.

(b) For purposes of this section, ratemaking treatments for a proposed facility include but are not limited to:

(i) The return on common equity investment or method of determining the return on common equity investment;

(ii) The depreciation life or schedule;

(iii) The maximum amount of costs that the commission will include in rates at the time determined by the commission without the public utility having the burden of moving forward with additional evidence of the prudence and reasonableness of such costs;

(iv) The method of handling any variances between cost estimates and actual costs; and

(v) The treatment of revenues received from wholesale purchasers of service from the proposed facility.

(3) The commission shall hold a public hearing on the application submitted by the public utility under this section. The commission may hold its hearing in conjunction with an application for a certificate.

(4) Based upon the hearing record, the commission shall issue an order that addresses the proposed ratemaking treatments. The commission may accept, deny or modify a proposed ratemaking treatment requested by the utility. In determining the proposed ratemaking treatments, the commission shall maintain a fair, just and reasonable balance of interests between the requesting utility and the utility's ratepayers.

(a) In reviewing the application, the commission shall also determine whether:

(i) The public utility has in effect a commission-accepted integrated resource plan;

(ii) The services and operations resulting from the facility are in the public interest and will not be detrimental to the provision of adequate and reliable electric service;

(iii) The public utility has demonstrated that it has considered other sources for long-term electric supply or transmission;

(iv) The addition of the facility is reasonable when compared to energy efficiency, demand-side management and other feasible alternative sources of supply or transmission; and

(v) The public utility participates in a regional transmission planning process.

(b) The commission shall use its best efforts to issue the order setting forth the applicable ratemaking treatments prior to the date of the proposed lease, acquisition or commencement of construction of the facility.

(c) The ratemaking treatments specified in the order issued under this section shall be binding in any subsequent commission proceedings regarding the proposed facility that is the subject of the order, except as may otherwise be established by law.

(5) The commission may not require a public utility to apply for an order under this section.

(6) The commission may promulgate rules or issue procedural orders for the purpose of administering this section.

CHAPTER 146
(S.B. No. 1126)

AN ACT

RELATING TO THE UNFAIR SALES ACT; REPEALING SECTION 48-405A, IDAHO CODE, RELATING TO THE LIMITATION OF QUANTITY OF ITEMS OFFERED FOR SALE AT RETAIL PROHIBITED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 48-405A, Idaho Code, be, and the same is hereby repealed.

Approved April 9, 2009.

CHAPTER 147
(S.B. No. 1134)

AN ACT

RELATING TO MOTOR VEHICLE FINANCIAL RESPONSIBILITY; AMENDING SECTION 2, CHAPTER 236, LAWS OF 2003, TO REVISE A SUNSET PROVISION AND TO PROVIDE FOR AN ANNUAL REPORT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 2, Chapter 236, Laws of 2003, be, and the same is hereby amended to read as follows:

SECTION 2. The provisions of this act shall be null, void and of no force and effect on and after June 30, 2009~~14~~. Beginning January 1, 2010, the department shall report to the Senate Transportation Committee and the House Transportation and Defense Committee on progress that the department is making toward upgrading and implementing the Division of Motor Vehicle's automated system. Such report shall be submitted no later than January 1 of each year.

Approved April 9, 2009.

CHAPTER 148
(H.B. No. 14, As Amended, As Amended in the Senate)

AN ACT

RELATING TO THE DEPARTMENT OF ADMINISTRATION AND GROUP INSURANCE; AMENDING SECTION 67-5767, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN SERVICES PROVIDED AND TO REVISE DEFINITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5767, Idaho Code, be, and the same is hereby amended to read as follows:

67-5767. DIRECTOR MAY PROVIDE SERVICE TO SCHOOL DISTRICTS ~~AND~~, PUBLIC COMMUNITY COLLEGES, PUBLIC COLLEGES, PUBLIC UNIVERSITIES OR OTHER POLITICAL SUBDIVISIONS. (1) Under terms and procedures mutually agreed upon by contract, the director of the department of administration may render the same services with respect to personnel of any school district, public community

college, public college, public university, or other political subdivision of the state of Idaho. The cost of any group insurance, group annuity or health care service coverage so provided and of administration thereof shall be borne by the school district, public community college, public college, public university, or other political subdivision.

(2) ~~Governmental entity~~ Other political subdivision for the purpose of this section means any organization composed of units of government of Idaho or organizations funded only by government or government employee contributions or organizations who discharge governmental responsibilities that would otherwise be performed by government. ~~All government entities are deemed to be political subdivisions for the purpose of this act.~~

Approved April 9, 2009.

CHAPTER 149
(H.B. No. 46, As Amended)

AN ACT

RELATING TO SOCIAL WORK LICENSING ACT; AMENDING SECTION 54-3209, IDAHO CODE, TO INCREASE THE APPLICATION FEE CAP AND TO INCREASE THE LICENSE RENEWAL FEE CAP.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-3209, Idaho Code, be, and the same is hereby amended to read as follows:

54-3209. FEES -- LICENSING -- DURATION OF LICENSES. Each person submitting an application for licensure to practice social work shall pay an application fee, as determined by the rules of the board, which shall not exceed ~~seventy-five~~ one hundred fifty dollars (\$~~75-0150~~) and which shall include the original license fee. Each person licensed to practice social work shall pay a license renewal fee, not to exceed ~~seventy-five~~ one hundred fifty dollars (\$~~75-0150~~) as determined by the rules of the board. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. Renewal shall be in accordance with the requirements of section 67-2614, Idaho Code.

Approved April 9, 2009.

CHAPTER 150
(H.B. No. 151)

AN ACT

RELATING TO FUELS TAX; AMENDING SECTION 63-2425, IDAHO CODE, TO PROVIDE FOR PENALTIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-2425, Idaho Code, be, and the same is hereby amended to read as follows:

63-2425. DYED FUEL AND OTHER UNTAXED FUEL PROHIBITED FOR USE ON A HIGHWAY -- PENALTIES. (1) Except as provided in subsection (2) of this section, no person shall operate a motor vehicle on a highway in this state if the fuel supply tanks of the vehicle contain diesel fuel which has been dyed or marked

under the provisions of 26 U.S.C. 4082 and regulations adopted thereunder, or under the clean air act and regulations adopted thereunder, or contain other motor fuel on which the tax under section 63-2402, Idaho Code, has not been paid.

(2) The following vehicles may use dyed fuel on the highway but are subject to the tax under section 63-2402, Idaho Code, unless exempt under other provisions of this chapter:

- (a) State and local government vehicles;
- (b) Any vehicles which may use dyed fuel on the highway under the provisions of 26 U.S.C. 4082 or regulations adopted thereunder.

(3) In addition to the provisions of section 63-2443, Idaho Code, any person violating the provisions of this section shall:

- (a) Upon the first violation, be subject to a civil penalty in the amount of two hundred fifty dollars (\$250);
- (b) Upon the second violation, be subject to a civil penalty in the amount of five hundred dollars (\$500); and
- (c) Upon the third or subsequent violation, be subject to a civil penalty in the amount of one thousand dollars (\$1,000) for each such violation.

The commission may assess penalties under this subsection (3) as a deficiency in tax pursuant to sections 63-2434 and 63-3045, Idaho Code.

Approved April 9, 2009.

CHAPTER 151

(H.B. No. 159, As Amended in the Senate)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-2002, IDAHO CODE, TO REVISE PROVISIONS RELATING TO GROUP LIFE INSURANCE CONTRACT REQUIREMENTS AND TO PROVIDE REQUIREMENTS RELATING TO GROUP LIFE INSURANCE POLICIES ISSUED TO CERTAIN PERSONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-2002, Idaho Code, be, and the same is hereby amended to read as follows:

41-2002. GROUP CONTRACTS MUST MEET GROUP REQUIREMENTS. (1) Unless as otherwise provided in subsection (3) of this section, nNo life insurance policy shall be delivered or issued for delivery in this state insuring the lives of more than one (1) individual unless to one (1) of the groups as provided for in sections 41-2003 through 41-2007 of this chapter, and unless in compliance with the other applicable provisions of this chapter.

- (2) Subsection (1) above, shall not apply to life insurance policies:
 - (a) Insuring only individuals related by blood, marriage or legal adoption; or
 - (b) Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or
 - (c) Insuring only individuals otherwise having an insurable interest in each other's lives.

(3) Group life insurance offered to a resident of this state under a group life insurance policy issued to a group other than one described in subsection (1) of this section shall be subject to the following requirements:

- (a) No such group life insurance policy shall be delivered in this state unless the director finds that:

- (i) The issuance of such group life insurance policy is not contrary to the best interest of the public;
(ii) The issuance of such group life insurance policy would result in economies of acquisition or administration; and
(iii) The benefits of such group life insurance policy are reasonable in relation to the premiums charged.
- (b) No such group life insurance coverage may be offered in this state by an insurer under a policy issued in another state unless this state or another state, having requirements substantially similar to those contained in subsection (3) (a) (i), (ii) and (iii), has made a determination that such requirements have been met.
- (c) The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both.
- (d) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

Approved April 9, 2009.

CHAPTER 152
(H.B. No. 163)

AN ACT

RELATING TO SCRAP DEALERS; REPEALING CHAPTER 27, TITLE 54, IDAHO CODE, RELATING TO REGULATION OF SCRAP DEALERS; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 27, TITLE 54, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE RECORDS REQUIRED FOR PURCHASING NONFERROUS OR STAINLESS STEEL METAL PROPERTY FROM THE GENERAL PUBLIC, TO PROVIDE REQUIREMENTS FOR PURCHASING OR RECEIVING METAL PROPERTY FROM THE GENERAL PUBLIC, TO PROVIDE FOR A RECORD FOR COMMERCIAL ACCOUNTS, TO PROVIDE FOR REPORTING TO LAW ENFORCEMENT, TO PROVIDE FOR PRESERVING EVIDENCE OF METAL THEFT, TO PROVIDE UNLAWFUL VIOLATIONS AND TO PROVIDE EXEMPTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 27, Title 54, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 27, Title 54, Idaho Code, and to read as follows:

CHAPTER 27
SCRAP DEALERS

54-2701. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under this chapter.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including, but not limited to, a telephone, cable, electric, water,

natural gas, or other utility, or railroad; building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes; or stainless steel designed to be used in agricultural or commercial businesses.

(4) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, gold, silver, platinum and their alloys.

(5) "Record" means a paper, electronic, or other method of storing information.

(6) "Scrap metal business" means a scrap metal supplier, scrap metal recycling center, and scrap metal processor.

(7) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(8) "Scrap metal recycling center" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(9) "Scrap metal supplier" means a person that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

(10) "Transaction" means a pledge, or the purchase of, or the trade of any item of nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business.

54-2702. RECORDS REQUIRED FOR PURCHASING NONFERROUS OR STAINLESS STEEL METAL PROPERTY FROM THE GENERAL PUBLIC. (1) At the time of a transaction, every scrap metal business doing business in this state shall produce, wherever that business is conducted, an accurate and legible record of each transaction involving nonferrous metal property or stainless steel metal property.

This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The date, location and value of the transaction;
- (c) The name of the employee representing the scrap metal business in the transaction;
- (d) The name and street address of the person with whom the transaction is made;
- (e) A photocopy or digital image of a current driver's license that is valid to operate a motor vehicle in the state of Idaho or a United States or Idaho government-issued picture identification of the seller; and
- (f) The license plate number of any vehicle required to have such a plate, if any, used by the person with whom the transaction is made.

(2) For every transaction that involves nonferrous or stainless steel metal property, every scrap metal business doing business in the state shall

require the person with whom a transaction is being made to sign a declaration.

The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following: "I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated and the time of day noted by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

54-2703. REQUIREMENTS FOR PURCHASING OR RECEIVING METAL PROPERTY FROM THE GENERAL PUBLIC. (1) No scrap metal business may enter into a transaction to purchase or receive nonferrous metal property or stainless steel from any person who cannot produce identification as described in section 54-2702(1)(e), Idaho Code.

(2) No scrap metal business may purchase or receive commercial metal property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof to the scrap metal business that the wire was lawfully burned or lawfully recovered from a burned structure.

(4) No scrap metal business may purchase or receive beer kegs from anyone except a distributor or manufacturer of beer kegs or licensed brewery.

54-2704. RECORD FOR COMMERCIAL ACCOUNTS. (1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

- (a) The full name of the commercial enterprise or commercial account;
- (b) The business address and telephone number of the commercial enterprise or commercial account;
- (c) The full name of the primary contact of the commercial enterprise or whoever is authorized to deliver nonferrous metal and stainless steel and commercial metal property to the scrap metal business; and
- (d) The full name of the primary contact of the commercial enterprise who is authorized to permit a scrap metal business to take possession of nonferrous metal and stainless steel and commercial metal property at the business location of the commercial enterprise.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of nonferrous metal and stainless steel and commercial metal property from the commercial enterprise. The documentation must include, at a minimum, the following information:

- (a) The time, date and value of the property being purchased or received;
- (b) A description of the predominant types of property being purchased or received.

(3) Payment for nonferrous metal and stainless steel and/or commercial metal property purchased or received by the scrap metal business will be made by check payable to the commercial enterprise.

54-2705. REPORTING TO LAW ENFORCEMENT. Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall make available a full, true, and correct record from the purchase or receipt of nonferrous metal property or stainless steel involving a specific individual, vehicle, or item of nonferrous metal property or commercial metal property. This information may be transmitted within a specified time of not less than five (5) business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

54-2706. PRESERVING EVIDENCE OF METAL THEFT. (1) Following notification, either verbally or in writing, from a commissioned law enforcement officer of the state or any of its political subdivisions, that an item of nonferrous metal property, stainless steel, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten (10) business days.

54-2707. UNLAWFUL VIOLATIONS. It is a misdemeanor for:

(1) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of nonferrous metal property or commercial metal property in order to deceive a scrap metal business;

(2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(3) Any person to sign the declaration required under this chapter knowing that the nonferrous metal property subject to the transaction is stolen;

(4) Any scrap metal business to possess commercial metal property that was not lawfully purchased or received under the requirements of this chapter;

(5) Any scrap metal business to engage in a series of transactions valued at less than twenty dollars (\$20.00) with the same seller for the purposes of avoiding the requirements of this chapter; or

(6) Any person to intentionally violate the provisions of section 54-2703, Idaho Code.

(7) Any person who has pled guilty to or been found guilty of violating the provisions of this section for a second time within five (5) years is guilty of a felony.

54-2708. EXEMPTIONS. The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers;

(2) Persons in the business of operating an automotive repair facility;

(3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers, except beer kegs; and

(4) Transactions of a value of less than twenty dollars (\$20.00).

CHAPTER 153

(H.B. No. 217, As Amended in the Senate)

AN ACT

RELATING TO MOTOR VEHICLES, DEALERS AND SALESMEN LICENSING; AMENDING SECTION 49-1614, IDAHO CODE, TO REVISE TERMINOLOGY, TO DELETE PROVISIONS RELATING TO THE TERMINATION, NONRENEWAL OR CANCELLATION OF CERTAIN FRANCHISES, TO DELETE PROVISIONS RELATING TO FAIR AND REASONABLE COMPENSATION, TO DELETE PROVISIONS RELATING TO CERTAIN RENTAL PAYMENTS, TO PROVIDE THAT A MANUFACTURER SHALL NOT CANCEL, TERMINATE OR FAIL TO RENEW CERTAIN FRANCHISE AGREEMENTS UNLESS CERTAIN REQUIREMENTS ARE SATISFIED, TO PROVIDE PROVISIONS RELATING TO THE TERMINATION, CANCELLATION OR NONRENEWAL OF CERTAIN FRANCHISE AGREEMENTS, TO PROVIDE PROVISIONS RELATING TO THE REPURCHASE OF CERTAIN ITEMS, TO PROVIDE FOR CERTAIN COMPENSATION, TO PROVIDE PROVISIONS RELATING TO REPURCHASE WITHIN A CERTAIN TIME PERIOD, TO PROVIDE PROVISIONS RELATING TO A SECURITY INTEREST, TO PROVIDE EXCEPTIONS FOR THE APPLICATION OF LAW, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR CERTAIN REIMBURSEMENTS, TO PROVIDE FOR APPLICATION OF LAW AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1614, Idaho Code, be, and the same is hereby amended to read as follows:

49-1614. TERMINATION, CANCELLATION OR NONRENEWAL. (1) Notwithstanding the terms, provisions or conditions of any franchise agreement, or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the notice requirement of subsection (2) of this section, and has good cause for cancellation, termination or nonrenewal.

(2) Notwithstanding the terms, provisions or conditions of any franchise agreement prior to the termination, cancellation or nonrenewal of any franchise agreement, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the department and the dealer:

(a) In the manner described in ~~paragraph~~ subsection (3) (b) of this subsection section; and

(b) Not less than ninety (90) days prior to the effective date of termination, cancellation or nonrenewal; or

(c) Not less than fifteen (15) days prior to the effective date of termination, cancellation or nonrenewal with respect to any of the following:

~~1-~~(i) Insolvency of the dealership, or filing of any petition by or against the dealership under any bankruptcy or receivership law;

~~2-~~(ii) Failure of the dealership to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

~~3-~~(iii) Conviction of the dealer, or any owner or his operator, resulting in imprisonment exceeding thirty (30) days;

~~4-~~(iv) Revocation of any license which the dealer is required to have to operate a dealership; and

(d) Not less than one hundred eighty (180) days prior to the effective date of termination or cancellation, where the manufacturer is discontinuing the sale of the product line.

(3) Notification under this section shall be in writing, by certified mail or personally delivered to the dealer, and shall contain a statement of

intention to terminate, cancel or not to renew the franchise agreement, and a statement of the reasons for and the date on which termination, cancellation or nonrenewal takes effect.

(4) Notwithstanding the terms, provisions or conditions of any franchise agreement or of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when there is a failure by the dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship, and provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days prior to termination, cancellation or nonrenewal. A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

(5) Notwithstanding any franchise agreement, the following shall not constitute good cause for a termination, cancellation or nonrenewal of a franchise agreement: the fact that the dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of motor vehicles; or that the dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor which existed prior to January 1, 1997; or is approved in writing by the manufacturer.

(6) The manufacturer shall have the burden of proof under this section concerning the issue of good cause, which shall include, but not be limited to, termination, nonrenewal or cancellation of any franchise agreement by the manufacturer for insolvency, license revocation, conviction of a felony, fraud by a dealer or failure by a dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship.

~~(7) (a) Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer, other than the manufacturer of recreational vehicles as defined in section 49-119, Idaho Code, with the exception of van type vehicles converted to recreational use, without good cause, the manufacturer shall pay to the dealer the fair market value of his business as a going concern. On payment, the dealer shall convey his business, free of liens and encumbrances, to the manufacturer, distributor or factory branch.~~

~~(b) Upon the termination, nonrenewal or cancellation of any franchise by a manufacturer of recreational vehicles without good cause, the recreational vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:~~

- ~~1. New vehicle inventory which has been acquired from the manufacturer;~~
- ~~2. Supplies and parts which have been acquired from the manufacturer;~~
- ~~3. Equipment and furnishings, provided the licensee purchased from the manufacturer or its approved source; and~~
- ~~4. Special tools.~~

~~(8) Fair and reasonable compensation for the above shall be paid by the manufacturer within ninety (90) days of the tender of the property, provided the licensee has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.~~

~~(9) In the event of a termination, cancellation or nonrenewal by the manufacturer under this section except termination, cancellation or nonrenewal by the manufacturer for insolvency, license revocation, conviction of a crime or fraud by a dealer, the manufacturer shall pay a sum equivalent to rent of the unexpired term of the lease or one (1) year rent, whichever is less, if the motor vehicle dealer is leasing its motor vehicle dealership facility from a lessor other than manufacturers or distributors, or a sum equivalent to reasonable rental value of the dealership facility for one~~

~~(1) year or the reasonable rental value of the facility until facilities are leased, whichever is less, if the motor vehicle dealer owns the motor vehicle dealer facility.~~

~~(10) The rental payment required under subsection (9) of this section is only required to the extent that the facilities were used for the sale and service of the manufacturer's or distributor's product, and only to the extent they are not leased for other purposes. Payment under subsection (9) of this section shall entitle the manufacturers or distributors to possession and use of the facility.~~

(7) Notwithstanding the terms, provisions or conditions of any franchise agreement, other written contract or agreement or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the requirements of this section.

(8) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer any new, undamaged and unused motor vehicles of the current model year and previous model year. Any new and unused motor vehicle repurchased by the manufacturer shall be repurchased at the net cost to the dealer. Net cost means the dealer's cost for a new, undamaged, unsold, and complete motor vehicle of the current model year or any previous model year acquired by the dealer within twelve (12) months of the date of termination and in a dealer's inventory purchased from the manufacturer or acquired from another dealer of the same line make in the ordinary course of business:

(a) Plus any charges by the manufacturer, distributor, or representative for distribution, delivery and taxes;

(b) Plus the dealer's cost of any manufacturer approved accessories added on the vehicle, except only those recreational vehicle accessories that are listed in the manufacturer's wholesale product literature as options for that vehicle shall be repurchased; and

(c) Less all allowances paid to the dealer by the manufacturer, distributor or representative.

(9) (a) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer the following:

(i) Any unused, undamaged, and unsold parts which have been acquired from the manufacturer, provided such parts are currently offered for sale by the manufacturer in its current parts catalog and are in salable condition. Such parts shall be repurchased by the manufacturer at the current catalog price, less any applicable discount;

(ii) Any supplies, equipment, and furnishings, including manufacturer or line make signs, required by and purchased from the manufacturer or its approved source within three (3) years of the date of termination, cancellation, or nonrenewal; and

(iii) Any special tools or other equipment purchased from the manufacturer within three (3) years of the date of termination, cancellation, or nonrenewal.

(b) Except as provided in paragraph (a) (i) of this subsection, compensation shall be the fair market value on the effective date of the termination, cancellation, or nonrenewal.

(10) The repurchase of any item under this section shall be accomplished within ninety (90) days of the effective date of the termination, cancellation, or nonrenewal, provided the dealer has clear title to the inventory and other items, or is able to convey such title to the manufacturer and does convey or transfer title and possession of the inventory and other items to the manufacturer.

(11) If the repurchase of any item under this section is subject to a security interest, the manufacturer may make payment jointly to the dealer and to the holder of the security interest.

(12) This section shall not apply to a nonrenewal or termination that is implemented as a result of the sale of the assets or stock of the motor vehicle dealer.

(13) In the event the manufacturer does not pay the dealer the amounts due under this section and a court of competent jurisdiction finds the manufacturer in violation of this section, the manufacturer shall, in addition to any amounts due, pay the dealer:

(a) Interest on the amount due computed at the rate applicable to a judgment of a court; and

(b) Reasonable attorney's fees and costs.

(14) Within ninety (90) days of the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer for the failure of a dealer to meet sales and service performance obligations or due to elimination, cessation or termination of a line make, the manufacturer shall commence to reimburse the dealer for one (1) year of the dealer's cost to rent or lease the dealership's facility or location or for the unexpired term of the lease or rental period, whichever is less, or, if the dealer owns the facility or location, for the equivalent of one (1) year of the reasonable rental value of the facilities or location as determined by an Idaho licensed commercial real estate appraiser. If more than one (1) franchise agreement is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers. However, if a franchise agreement is terminated, canceled, or not renewed but the dealer continues in business at the same location under a different franchise agreement, the reimbursement required by this subsection shall not be required to be paid. In addition, any reimbursement due under this subsection shall be reduced by any amount received by the dealer by virtue of the dealer leasing, subleasing, or selling the facilities or location during the year immediately following the termination, cancellation, or nonrenewal.

(15) All procedures and protections afforded to a motor vehicle dealer under this section shall be available to a recreational vehicle dealer. However, the remedies afforded under this section shall only apply to recreational vehicle dealers where the manufacturer of recreational vehicles as defined in section 49-119, Idaho Code, terminates or fails to renew any franchise agreement without good cause.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 9, 2009.

CHAPTER 154
(H.B. No. 222)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-511, IDAHO CODE, TO PROVIDE THAT SELF-INSURED COUNTIES PROVIDING WORKER'S COMPENSATION INSURANCE FOR PERSONS PERFORMING COMMUNITY SERVICE ARE NOT REQUIRED TO REMIT A CERTAIN FEE TO THE STATE INSURANCE FUND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 20-520, IDAHO CODE, TO PROVIDE THAT SELF-INSURED COUNTIES PROVIDING WORKER'S COMPENSATION INSURANCE FOR PERSONS PERFORMING COMMUNITY SERVICE ARE NOT REQUIRED TO REMIT A CERTAIN FEE TO THE STATE INSURANCE FUND; AND AMENDING SECTION 31-3201C,

IDAHO CODE, TO PROVIDE THAT SELF-INSURED COUNTIES PROVIDING WORKER'S COMPENSATION INSURANCE FOR PERSONS PERFORMING COMMUNITY SERVICE ARE NOT REQUIRED TO REMIT A CERTAIN FEE TO THE STATE INSURANCE FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-511, Idaho Code, be, and the same is hereby amended to read as follows:

20-511. DIVERSION OR INFORMAL DISPOSITION OF THE PETITION. (1) Prior to the filing of any petition under this act, the prosecuting attorney may request a preliminary inquiry from the county probation officer to determine whether the interest of the public or the juvenile requires a formal court proceeding. If court action is not required, the prosecuting attorney may utilize the diversion process and refer the case directly to the county probation officer or a ~~community-based diversion~~ community-based diversion program for informal probation and counseling. If community service is going to be utilized pursuant to this subsection, the prosecuting attorney shall collect a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile is going to perform and remit the fee to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile performing community service. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required.

(2) After the petition has been filed and where, at the admission or denial hearing, the juvenile admits to the allegations contained in the petition, the court may decide to make an informal adjustment of the petition. Informal adjustment includes, but is not limited to:

- (a) Reprimand of the juvenile;
- (b) Informal supervision with the probation department;
- (c) Community service work;
- (d) Restitution to the victim;
- (e) Participation in a community-based diversion program.

(3) Information uniquely identifying the juvenile, the offense, and the type of program utilized shall be forwarded to the department. This information shall be maintained by the department in a statewide juvenile offender information system. Access to the information shall be controlled by the department, subject to the provisions of section 9-342, Idaho Code.

Such informal adjustment of the petition shall be conducted in the manner prescribed by the Idaho juvenile rules. When an informal adjustment is made pursuant to this section and the juvenile is to perform community service work, the court shall assess the juvenile a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile is to perform. This fee shall be remitted by the court to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile performing community service. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required.

SECTION 2. That Section 20-520, Idaho Code, be, and the same is hereby amended to read as follows:

20-520. SENTENCING. (1) Upon the entry of an order finding the juvenile is within the purview of the act, the court shall then hold a sentencing hearing in the manner prescribed by the Idaho juvenile rules to determine the sentence that will promote accountability, competency development and community protection. Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court may request and, if

requested, shall receive a report containing the results of an inquiry into the home environment, past history, competency development, prevention or out of home placement services provided, and the social, physical and mental condition of the juvenile. The court shall not consider or review the report prior to the entry of an order of adjudication. Upon presentation and consideration of the report by the court, the court may proceed to sentence the juvenile as follows:

(a) Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order, except the court may place a juvenile on formal probation for a period not to exceed the juvenile's twenty-first birthday if the court finds that the juvenile has committed a crime of a sexual nature;

(b) Sentence the juvenile to detention pursuant to this act for a period not to exceed thirty (30) days for each act, omission or status which is prohibited by the federal, state, local or municipal law or ordinance by reason of minority only. The sentence shall not be executed unless the act, omission or status is in violation of section 922(x) of title 18, United States Code, or the court finds that the juvenile has violated the court's decree imposing the sentence as provided below.

If the court, after notice and hearing, finds that a juvenile has violated the court's decree imposing the sentence under circumstances that bring the violation under the valid court order exception of the federal juvenile justice and delinquency prevention act of 1974, as amended, the court may commit the juvenile to detention for the period of detention previously imposed at sentencing;

(c) Commit the juvenile to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile has been adjudicated as an habitual status offender;

(d) If the juvenile has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile to detention for a period not to exceed one hundred eighty (180) days for each unlawful or criminal act;

(e) Whenever a court commits a juvenile to a period of detention it shall notify the school district where the detention facility is located. No juvenile who is found to come within the purview of the act for the commission of a status offense shall be sentenced to detention in a jail facility unless an adjudication has been made that the juvenile is an habitual status offender;

(f) Commit the juvenile to detention and suspend the sentence on specific probationary conditions;

(g) The court may suspend or restrict the juvenile's driving privileges for such periods of time as the court deems necessary, and the court may take possession of the juvenile's driver's license. The juvenile may request restricted driving privileges during a period of suspension, which the court may allow if the juvenile shows by a preponderance of evidence that driving privileges are necessary for his employment or for family health needs;

(h) The court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile in a hospital or other suitable facility;

(i) The court may order that the department of health and welfare conduct a comprehensive substance abuse assessment of the juvenile. After receiving the comprehensive substance abuse assessment, and upon a finding by the court that treatment will provide a cost-effective means of achieving the sentencing goals of accountability, competency

development and community protection, the court may order that the juvenile receive immediate treatment for substance abuse in keeping with a plan of treatment approved by the court. The initial cost of the assessment and treatment shall be borne by the department of health and welfare. The director of the department of health and welfare may promulgate rules consistent with this paragraph (i) to establish a schedule of fees to be charged to parents by the department of health and welfare for such services based upon the cost of the services and the ability of parents to pay;

(j) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one (1) parent, restrictions on the juvenile's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;

(k) The court may make any other reasonable order which is in the best interest of the juvenile or is required for the protection of the public, except that no person under the age of eighteen (18) years may be committed to jail, prison or a secure facility which does not meet the standards set forth in section 20-518, Idaho Code, unless jurisdiction over the individual is in the process of being waived or has been waived pursuant to section 20-508 or 20-509, Idaho Code. The court may combine several of the above-listed modes of disposition where they are compatible;

(l) An order under the provisions of this section for probation or placement of a juvenile with an individual or an agency may provide a schedule for review of the case by the court;

(m) Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code;

(n) Order the case and all documents and records connected therewith transferred to the magistrate division of the district court for the county where the juvenile and/or parents reside if different than the county where the juvenile was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;

(o) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile and the community;

(p) The court shall assess a twenty dollar (\$20.00) detention/probation training academy fee against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter. All moneys raised pursuant to this paragraph shall be transmitted by the court for deposit in the juvenile corrections fund which is created in section 20-542, Idaho Code;

(q) Additionally, the court shall assess a fee of sixty cents (60¢) per hour of community service against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter and the court is ordering community service. Such fee is to be remitted by the court to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service pursuant to this chapter. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required;

(r) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the juvenile's nineteenth birthday, unless the custody review board deter-

mines that extended time in custody is necessary to address competency development, accountability, and community protection; provided however, that no juvenile shall remain in the custody of the department beyond the juvenile's twenty-first birthday. The department shall adopt rules implementing the custody review board and operations and procedures of such board;

(s) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten (10) years to a period of detention or to the custody of the department of juvenile corrections for placement in secure confinement.

(2) When an order is entered pursuant to this section, the juvenile shall be transported to the facility or program so designated by the court or the department, as applicable, by the sheriff of the county where the juvenile resides or is committed, or by an appointed agent. When committing a juvenile to the department, or another entity, the court shall at once forward to the department or entity a certified copy of the order of commitment.

(3) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the juvenile or his parents or both to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code. The amount of restitution which may be ordered by the court shall not be subject to the limitations of section 6-210, Idaho Code. Court-ordered restitution shall be paid prior to any other court-ordered payments unless the court specifically orders otherwise.

(4) The court may order the juvenile's parents, legal guardian or custodian to pay the charges imposed by community programs ordered by the court for the juvenile, or the juvenile's parents, legal guardian or custodian.

(5) Any parent, legal guardian or custodian violating any order of the court entered against the person under the provisions of this chapter shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

SECTION 3. That Section 31-3201C, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201C. **COMMUNITY SERVICE FEE.** The court shall charge a fee of sixty cents (60¢) per hour of community service to be remitted to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service; however, if a county is self-insured and provides worker's compensation insurance for persons performing community service, then remittance to the state insurance fund is not required. This per hour fee shall be paid by each person found guilty of any felony or misdemeanor and community service is provided as part of the sanction or as a condition of a withheld judgment or probation. The court may waive such fee if it determines the person is indigent and unable to pay such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the district court and deposited in the county treasury for payment to the state insurance fund.

Approved April 9, 2009.

CHAPTER 155
(H.B. No. 147)

AN ACT

RELATING TO COMMERCIAL DRIVER'S LICENSES; AMENDING SECTION 49-335, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DISQUALIFICATIONS AND CERTAIN PENALTIES; AND AMENDING SECTION 49-337, IDAHO CODE, TO REVISE LANGUAGE AND TO REVISE PROVISIONS RELATING TO FINES FOR CERTAIN EMPLOYERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-335, Idaho Code, be, and the same is hereby amended to read as follows:

49-335. DISQUALIFICATIONS AND PENALTIES -- COMMERCIAL DRIVER'S LICENSE. (1) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if convicted in the form of a judgment or withheld judgment of a first violation under any state or federal law of:

(a) Operating a motor vehicle while under the influence of alcohol or a controlled substance;

(b) Operating a commercial motor vehicle while the alcohol concentration of the person's blood, breath or bodily substance is 0.04 or more;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of any felony;

(e) Operating a commercial motor vehicle when the person's class A, B or C commercial driver's license driving privileges were revoked, suspended or canceled, or during a time when such person was disqualified from operating a commercial motor vehicle, if the reason for such revocation, suspension, cancellation or disqualification was the result of a violation that occurred while the person was operating a commercial motor vehicle;

(f) Causing a fatality through negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.

(2) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

(3) If any of the offenses specified in subsection (1) or (2) of this section occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three (3) years.

(4) A person is disqualified for the period of time specified in 49 CFR part 383 if found to have committed two (2) or more of any of the offenses specified in subsection (1) or (2) of this section, or any combination of those offenses, arising from two (2) or more separate incidents.

(5) A person is disqualified for the period of time specified in 49 CFR part 383 from operating a commercial motor vehicle who uses a motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession of a controlled substance with the intent to manufacture, distribute or dispense such controlled substance.

(6) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty (60) days if convicted of two (2) serious

traffic violations, or one hundred twenty (120) days if convicted of three (3) or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period. A conviction for reckless driving shall be considered a serious traffic violation if committed while operating a commercial motor vehicle or a noncommercial motor vehicle, as specified in 49 CFR part 383.

(7) A person who drives, operates, or is in physical control of a commercial motor vehicle within this state while having any detectable amount of alcohol in his system or who refuses to submit to an alcohol test must be placed out of service for twenty-four (24) hours and be subject to the provisions of section 18-8002, Idaho Code.

(8) It is unlawful ~~for a holder of a class A, B or C license~~ to violate an out-of-service order. A person who is convicted in the form of a judgment or withheld judgment of a violation of an out-of-service order while driving a commercial motor vehicle is disqualified for not less than:

(a) ~~Ninety (90)~~ One hundred eighty (180) days nor more than one (1) year for a first conviction;

(b) ~~One Two (12)~~ years nor more than five (5) years for a second conviction arising from separate incidents during any ten (10) year period;

(c) Three (3) years nor more than five (5) years for three (3) or more convictions arising from separate incidents during any ten (10) year period.

(9) A person who is convicted in the form of a judgment or withheld judgment of a violation of an out-of-service order while driving a commercial motor vehicle and while transporting hazardous materials required to be placarded under the hazardous materials transportation act, or while operating motor vehicles designed to transport sixteen (16) or more people including the driver, is disqualified for not less than:

(a) One hundred eighty (180) days nor more than two (2) years for a first conviction;

(b) Three (3) years nor more than five (5) years for subsequent convictions arising from separate incidents in any ten (10) year period.

(10) A person is disqualified from operating a commercial motor vehicle if convicted of a railroad grade crossing violation as specified in 49 CFR part 383 or applicable state laws while operating a commercial motor vehicle. The disqualification shall be for a period of:

(a) Sixty (60) days for a first conviction;

(b) One hundred twenty (120) days for a second conviction during any three (3) year period;

(c) One (1) year for a third or subsequent conviction during any three (3) year period.

~~(11) A person is additionally disqualified from operating a commercial motor vehicle in accordance with 49 CFR part 383 if such person is convicted of operating a commercial motor vehicle during a time when such person's class A, B or C driving privileges were revoked, suspended or canceled or during a time when such person was disqualified from operating a commercial motor vehicle.~~

~~(12) A person is additionally disqualified from operating a commercial motor vehicle in accordance with 49 CFR part 383 if convicted of causing a fatality through the negligent operation of a commercial motor vehicle. Such negligent operation of a commercial motor vehicle may include, but is not limited to, the crimes of motor vehicle manslaughter, homicide by motor vehicle, or negligent homicide by motor vehicle.~~

~~(13)~~ In addition to the disqualification periods in subsections (8) and (9) of this section, a driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than ~~one two thousand one five hundred dollars (\$1,1002,500)~~ nor more for the first conviction and not less than two five thousand seven hundred fifty dollars (\$2,7505,000) for any subsequent conviction.

SECTION 2. That Section 49-337, Idaho Code, be, and the same is hereby amended to read as follows:

49-337. EMPLOYEE AND EMPLOYER RESPONSIBILITIES. (1) Any operator of a commercial motor vehicle ~~holding~~ or any person who holds a class A, B or C driver's license issued by this state, and who is convicted of violating any state law or local ordinance in any other state relating to motor vehicle traffic control, other than parking violations, such person shall notify the department of the conviction in the manner specified by the department within thirty (30) days of the date of conviction.

(2) Any operator of a commercial motor vehicle ~~holding~~ or any person who holds a class A, B or C driver's license issued by this state, and who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state, other than parking violations, such person shall notify his employer in writing of the conviction within thirty (30) days of the date of conviction.

(3) Each employee whose class A, B or C driver's license is suspended, revoked, denied, refused or canceled by this state or who loses the privilege to operate a commercial motor vehicle in any state for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify his employer of that fact before the end of the business day following the day the employee received notice of that fact.

(4) Each person who applies for employment as an operator of a commercial motor vehicle with an employer shall provide notification to the employer, at the time of application, of his previous employment as an operator of a commercial motor vehicle. The period of previous employment of which notification must be given shall be the ten (10) year period ending on the date of application for employment.

(5) No employer shall knowingly allow, permit, require or authorize an employee to operate a commercial motor vehicle in the United States during any period:

(a) In which the employee has a driver's license suspended, revoked or canceled by a state, has lost the privilege to operate a commercial motor vehicle in a state or has been disqualified from operating a commercial motor vehicle; or

(b) In which the employee has more than one (1) driver's license; or

(c) In which the employee, or the motor vehicle being driven, or the motor carrier operation, is subject to an out-of-service order.

(6) An employer who is convicted of a violation of subsection (5) (c) of this section shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars (\$2,750) nor more than ~~eleven~~ twenty-five thousand dollars (~~\$11~~25,000).

(7) No employer shall knowingly allow, permit, require or authorize an employee to operate a commercial motor vehicle in the United States in violation of any federal, state or local law or federal regulation pertaining to railroad grade crossings. An employer who is convicted of a violation of this subsection (7) shall, in addition to the general penalties provided for in this title, be subject to a civil penalty of not more than ten thousand dollars (\$10,000).

(8) Each employer shall require the information specified in subsection (4) of this section to be provided by the employee.

Law without signature.

CHAPTER 156
(H.B. No. 168)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION ACT; AMENDING SECTION 18-8308, IDAHO CODE, TO PROVIDE THAT CERTAIN SEXUAL OFFENDERS SHALL REPORT TO THE COUNTY SHERIFF IF THE SEXUAL OFFENDER DID NOT PROVIDE A PHYSICAL RESIDENCE ADDRESS AT THE TIME OF REGISTRATION, TO PROVIDE CERTAIN REPORTING REQUIREMENTS AND TO PROVIDE THAT THE SHERIFF SHALL VERIFY THE LOCATION PROVIDED BY THE OFFENDER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8308, Idaho Code, be, and the same is hereby amended to read as follows:

18-8308. VERIFICATION OF ADDRESS. (1) Violent sexual predators. The address or physical residence of an offender designated as a violent sexual predator shall be verified by the department between registrations.

(a) The procedure for verification shall be as follows:

(i) The department shall mail a nonforwardable notice of address verification every thirty (30) days between registrations, to each offender designated as a violent sexual predator.

(ii) Each offender designated as a violent sexual predator shall complete, sign and return the notice of address verification form to the department within seven (7) days of the mailing date of the notice. If the notice of address verification is returned to the department as not delivered, the department shall, within five (5) days, notify the sheriff with whom the offender designated as a violent sexual predator last registered.

(iii) The sheriff shall verify the address of the offender by visiting the offender's residence once every six (6) months or, if the offender fails to comply with the provisions of paragraph (a) (ii) of this subsection, at any reasonable time to verify the address provided at registration.

(2) All other sexual offenders. The address or physical residence of any sex offender not designated as a violent sexual predator shall be verified by the department between registrations.

(a) The procedure for verification shall be as follows:

(i) The department shall mail a nonforwardable notice of address verification every four (4) months between annual registrations.

(ii) Each offender shall complete, sign and return the notice of address verification form to the department within seven (7) days of the mailing date of the notice. If the notice of address verification is returned as not delivered, the department shall notify the sheriff within five (5) days and the sheriff shall visit the residence of the registered offender at any reasonable time to verify the address provided at registration.

(3) A sexual offender who does not provide a physical residence address at the time of registration shall report, in person, once every seven (7) days to the sheriff of the county in which he resides. Each time the offender reports to the sheriff, he shall complete a form provided by the department that includes the offender's name, date of birth, social security number and a detailed description of the location where he is residing. The sheriff shall visit the described location at least once each month to verify the location of the offender.

CHAPTER 157
(S.B. No. 1098, As Amended)

AN ACT

RELATING TO OFF-HIGHWAY VEHICLES; AMENDING SECTION 41-2502, IDAHO CODE, TO PROVIDE EXCEPTIONS TO UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE FOR AUTOMOBILE INSURANCE; AMENDING SECTION 49-102, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 49-120, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 49-122, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 49-123, IDAHO CODE, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-302, IDAHO CODE, TO PROVIDE AN ADDITIONAL EXEMPTION FROM LICENSURE; AMENDING SECTION 49-402, IDAHO CODE, TO REVISE WHERE THE OPERATION OF CERTAIN VEHICLES REQUIRES A RESTRICTED VEHICLE LICENSE PLATE FEE TO BE PAID, TO PERMIT NONRESIDENTS TO PURCHASE A RESTRICTED VEHICLE PLATE AND STICKER FOR CERTAIN VEHICLES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-426, IDAHO CODE, TO PERMIT POLITICAL SUBDIVISIONS TO MAKE CERTAIN DESIGNATIONS BY RESOLUTION, TO APPLY CERTAIN ROAD CLOSURE PROVISIONS TO SPECIALTY OFF-HIGHWAY VEHICLES, TO REMOVE CERTAIN VEHICLES FROM HIGHWAY CLOSURE RESTRICTIONS, TO PROVIDE FOR THE APPLICATION OF CERTAIN EXISTING AND ADDITIONAL IDAHO CODE CHAPTERS TO THE OPERATION OF CERTAIN VEHICLES, TO REMOVE CERTAIN VEHICLES FROM THE APPLICATION OF CERTAIN IDAHO CODE CHAPTERS, TO REVISE THE VEHICLES THAT THE IDAHO TRANSPORTATION BOARD MAY PERMIT TO CROSS DESIGNATED SECTIONS OF STATE HIGHWAYS, TO REMOVE A LICENSING REQUIREMENT FOR CERTAIN VEHICLES THAT MAY BE USED ON CERTAIN LANDS AND TO REVISE THE VEHICLES THAT MAY BE USED ON CERTAIN LANDS; AMENDING SECTION 49-456, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 49-948, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 67-7101, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 67-7105, IDAHO CODE, TO PROVIDE ADDITIONAL VEHICLES THAT ARE EXEMPT FROM CERTAIN CHAPTER PROVISIONS; AMENDING SECTION 67-7114, IDAHO CODE, TO PROVIDE CRIMINAL PENALTY FOR THE DRIVING OR OPERATION OF A SPECIALTY OFF-HIGHWAY VEHICLE UNDER CERTAIN INFLUENCES, TO REMOVE AN IDAHO CODE REFERENCE AND TO REVISE TERMINOLOGY; AMENDING SECTION 67-7122, IDAHO CODE, TO PROVIDE FOR REGISTRATION OF A SPECIALTY OFF-HIGHWAY VEHICLE, TO REVISE TERMINOLOGY, TO REVISE WITH WHOM REGISTRATION MUST BE MADE, TO REVISE A REGISTRATION FEE, TO PROVIDE AN EFFECTIVE DATE FOR THE REVISED REGISTRATION FEE, TO REVISE WHO MAY RETAIN A PORTION OF THE REGISTRATION FEE, TO PROVIDE WHEN CERTAIN VEHICLES MUST BE REGISTERED, TO PROVIDE FOR THE PLACEMENT OF A REGISTRATION STICKER ON CERTAIN VEHICLES, TO PROVIDE EXCEPTIONS TO A RESTRICTED VEHICLE LICENSE PLATE REQUIREMENT AND TO PERMIT NONRESIDENTS TO PURCHASE A RESTRICTED VEHICLE LICENSE PLATE AND/OR STICKER FOR CERTAIN VEHICLES; AMENDING SECTION 67-7124, IDAHO CODE, TO REMOVE A TIME REQUIREMENT FOR REGISTRATION OF CERTAIN VEHICLES BY NONRESIDENT OWNERS, TO PROVIDE FOR NONAPPLICATION OF REGISTRATION REQUIREMENTS FOR THE OWNERS OF CERTAIN VEHICLES THAT ARE CURRENTLY AND PROPERLY REGISTERED IN THE STATE OF RESIDENCE, TO REQUIRE THE NONRESIDENT OWNERS OF CERTAIN VEHICLES FROM STATES WITHOUT A REGISTRATION REQUIREMENT TO REGISTER IN IDAHO BEFORE OPERATING THE VEHICLE IN IDAHO, TO PROVIDE USE PRIVILEGES AND RESPONSIBILITIES TO NONRESIDENT OWNERS OF CERTAIN VEHICLES REGISTERED IN ANOTHER STATE; AMENDING SECTION 67-7126, IDAHO CODE, TO REVISE A REGISTRATION FEE AMOUNT AND THE ALLOCATION OF THE FEE AND TO RESTRICT LIABILITY OF CERTAIN ENTITIES AND EMPLOYEES REGARDING THE COLLECTION OR USE OF SUCH FEES; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-2502, Idaho Code, be, and the same is hereby amended to read as follows:

41-2502. UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE FOR AUTOMOBILE INSURANCE -- EXCEPTIONS. (1) Except as otherwise provided in subsection (2) of this section, no owner's or operator's policy of motor vehicle liability insurance that is subject to the requirements of section 49-1212(1) or (2), Idaho Code, shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death as set forth in section 49-117, Idaho Code, as amended from time to time, under provisions approved by the director of the department of insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured and underinsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

(2) A named insured shall have the right to reject either or both uninsured motorist coverage or underinsured motorist coverage, which rejection must be in writing or in an electronic record as authorized by the uniform electronic transactions act, chapter 50, title 28, Idaho Code, and such rejection shall be effective as to all other insureds and named insureds; and after which such rejected coverage need not be provided in or supplemental to a renewal or replacement policy issued by the same insurer or an affiliate of that insurer.

(3) Prior to the issuance of any new policy or the first renewal or replacement of any existing policy of motor vehicle liability insurance with an effective date on or after January 1, 2009, a named insured shall be provided a standard statement approved by the director of the department of insurance, explaining in summary form, both uninsured and underinsured motorist coverage, and the different forms of underinsured motorist coverage that might be available from insurers in Idaho.

(4) The provisions of this section shall not apply to policies of motor vehicle liability insurance for coverage on all-terrain vehicles, utility type vehicles, specialty off-highway vehicles or motorbikes as those terms are defined in section 67-7101, Idaho Code.

SECTION 2. That Section 49-102, Idaho Code, be, and the same is hereby amended to read as follows:

49-102. DEFINITIONS -- A. (1) "Abandon" means to leave a vehicle on private property without the permission of the person having rights to the possession of the property, or on a highway or other property open to the public for the purposes of vehicular traffic or parking, or upon or within the right-of-way of any highway, for twenty-four (24) hours or longer.

(2) "Abandoned vehicle" means any vehicle observed by an authorized officer or reported by a member of the public to have been left within the limits of any highway or upon the property of another without the consent of the property owner for a period of twenty-four (24) hours or longer, except that a vehicle shall not be considered abandoned if its owner-operator is unable to remove it from the place where it is located and has notified a law enforcement agency and requested assistance.

(3) "Accident" means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile or special mobile equipment.

(4) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or the vehicle moving.

(5) "Administrator" means the federal highway administrator, the chief executive of the federal highway administration, an agency within the U.S. department of transportation.

(6) "Age of a motor vehicle" means the age determined by subtracting the manufacturer's year designation of the vehicle from the year in which the designated registration fee is paid. If the vehicle has the same manufacturer's year designation as the year in which the fee is paid, or if a vehicle has a manufacturer's year designation later than the year in which the fee is paid, the vehicle shall be deemed to be one (1) year old.

(7) "Air-conditioning equipment" means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(8) "Alcohol or alcoholic beverage" means:

(a) Beer as defined in 26 U.S.C. section 5052(a), of the Internal Revenue Code;

(b) Wine of not less than one-half of one percent (.005%) of alcohol by volume; or

(c) Distilled spirits as defined in section 5002(a)(8), of the Internal Revenue Code.

(9) "Alley" means a public way of limited use intended only to provide access to the rear or side of lots or buildings in urban districts.

(10) "All-terrain vehicle" or "ATV" means any recreation vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, ~~traveling on low pressure tires of ten (10) psi or less~~, has handlebar steering and a seat designed to be straddled by the operator.

(11) "Amateur radio operator." (See "Radio operator, amateur," section 49-119, Idaho Code)

(12) "Ambulance" means a motor vehicle designed and used primarily for the transportation of injured, sick, or deceased persons, on stretchers, cots, beds, or other devices for carrying persons in a prone position.

(13) "Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a driver's license.

(14) "Approved driver training course" means a training course from a school licensed under the provisions of chapter 21 of this title or a driver training course approved by another United States jurisdiction provided the course was taken while an individual was a resident of that United States jurisdiction.

(15) "Approved testing agency" means a person, firm, association, partnership or corporation approved by the director of the Idaho state police which is:

(a) In the business of testing equipment and systems;

(b) Recognized by the director as being qualified and equipped to do experimental testing; and

(c) Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry.

(16) "Armed forces" means the army, navy, marine corps, coast guard and the air force of the United States.

(17) "Authorized emergency vehicle." (See "Vehicle," section 49-123, Idaho Code)

(18) "Authorized officer" means any member of the Idaho state police, or any regularly employed and salaried deputy sheriff, or other county employee designated to perform the function of removing abandoned vehicles or junk vehicles by the board of county commissioners of the county in which a vehicle is located, or any regularly employed and salaried city peace officer or other city employee designated to perform the function of removing abandoned vehicles or junk vehicles by the city council, or a qualified person deputized or appointed by the proper authority as reserve deputy sheriff or city policeman, authorized within the jurisdiction in which the abandoned vehicle or junk vehicle is located.

(19) "Authorized transportation department employee" means any employee appointed by the board to perform duties relating to enforcement of

vehicle laws as have been specifically defined and approved by order of the board (see section 40-510, Idaho Code).

(20) "Auto transporter" means a vehicle combination constructed for the purpose of transporting vehicles.

SECTION 3. That Section 49-120, Idaho Code, be, and the same is hereby amended to read as follows:

49-120. DEFINITIONS -- S. (1) "Saddlemount combination" means a combination of vehicles in which a truck or truck tractor tows one (1), two (2) or three (3) trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. A smaller vehicle mounted completely on the frame of either the first or last vehicle may be used in a saddlemount combination.

(2) "Safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) "Safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(4) "Salvage pool" means a licensed vehicle dealer engaged primarily in the business of disposing of salvage vehicles, recovered stolen vehicles, or both.

(5) "School bus" means every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of "Minimum Standards for School Buses" and is used to transport children to or from school or in connection with school approved activities and includes buses operated by contract carriers.

(6) "Secretary" means the secretary of transportation of the United States.

(7) "Security agreement." (See section 28-9-102, Idaho Code)

(8) "Security interest." (See section 28-1-201, Idaho Code)

(9) "Sell," "sold," "buy," and "purchase," mean and include, as used in sections 49-2401 through 49-2406, Idaho Code, exchange, barter, gift, and offer or contract to sell or buy.

(10) "Semitrailer." (See "Trailer," section 49-121, Idaho Code)

(11) "Serious traffic violation" means conviction of an offense specified in 49 CFR part 383 and including any subsequent amendments thereto, while operating a commercial motor vehicle, and shall include driving a commercial motor vehicle:

(a) Without obtaining a commercial driver's license; or

(b) Without having a commercial driver's license in the driver's possession; or

(c) Without the proper license class of commercial driver's license or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

(12) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for use by pedestrians.

(13) "Signal." (See "Railroad sign," section 49-119, Idaho Code)

(14) "Skills test" means an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

(15) "Slow moving vehicle" means any vehicle not normally operated upon the highways.

(16) "Snow tire." (See "Tires," section 49-121, Idaho Code)

(17) "Sold." (See "Sell," "buy," and "purchase," this section)

(18) "Solid rubber tire." (See "Tires," section 49-121, Idaho Code)

(19) "Special license plate" means a license plate that is made available to the public as a personal alternative to the standard issue license plate. No special program fee shall be charged for the registration or plates issued under sections 49-403, 49-403A, 49-404, 49-405, 49-410, 49-415, 49-415A and 49-415B, Idaho Code.

(20) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including: ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and drag lines, and self-propelled cranes, and earth moving equipment. The term does not include travel trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(21) "Specially constructed vehicle." (See "Vehicle," section 49-123, Idaho Code)

(22) "Specialty off-highway vehicle." (See "Vehicle," section 49-123, Idaho Code)

(23) "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(234) "State" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of Canada.

(245) "Stop" means the act of or complete cessation from movement.

(256) "Stopping" means the act of any halting even momentarily of a vehicle.

(267) "Street." (See "Highways," section 49-109, Idaho Code)

(278) "Street rod" means any pre-1949 vehicle which has had a significant drive train update from a more modern vehicle. Changes may include engine, transmission, rear axle, and other suspension components. The body will be, or resemble the same as the manufacturer's original issue after its first sale after manufacture.

(289) "Studded tire." (See "Tires," section 49-121, Idaho Code)

(2930) "Substandard width lane" means a lane that is too narrow for a bicycle and a motor vehicle to travel safely side by side within the lane.

(301) "Supplemental lot" means a physically separate location owned and maintained by a licensed dealer or manufacturer within the same or adjacent county as the principal place of business which meets all the requirements for a principal place of business.

(312) "Suspension of driver's license" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's driver's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department.

(323) "Suspension of vehicle registration" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's vehicle registration or, in the case of fleets of vehicles, all vehicle registrations in each fleet operated by a company. Upon suspension, the privileges of operating the vehicle or vehicles on Idaho highways is terminated until the difficulty that caused the suspension is corrected and notification is provided that the suspension has been lifted.

SECTION 4. That Section 49-122, Idaho Code, be, and the same is hereby amended to read as follows:

49-122. DEFINITIONS -- U. (1) "Unauthorized vehicle" means any vehicle parked or otherwise left on private property without the consent of the person owning or controlling that property.

(2) "United States" means the fifty (50) states and the District of Columbia.

(3) "Unladen weight." (See "Light weight," section 49-113, Idaho Code)

(4) "Unregistered vehicle" means a vehicle without current registration on file with the department or with the appropriate agency of another state, unless exempt from registration.

(5) "Unusual noise." (See "Excessive," section 49-106, Idaho Code)

(6) "Urban district." (See "District," section 49-105, Idaho Code)

(7) "Utility trailer" means a trailer or semitrailer designed primarily to be drawn behind a passenger car or pickup truck for domestic and utility purposes. Utility or domestic use shall include a farm trailer while being used to haul agricultural products or livestock from farm to storage, market or processing plant, or returning therefrom.

(8) "Utility type vehicle (UTV)" means any recreational motor vehicle other than an ATV, motorbike or snowmobile as defined in section 67-7101, Idaho Code, designed for and capable of travel over designated ~~unpaved~~ roads, traveling on four (4) or more ~~low pressure tires of twenty (20) psi or less~~, maximum width less than seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds, ~~or~~ and having a wheelbase of ~~ninety-four one hundred ten (94110)~~ inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in section 49-110(2), Idaho Code, or vehicles otherwise registered under title 49, Idaho Code.

SECTION 5. That Section 49-123, Idaho Code, be, and the same is hereby amended to read as follows:

49-123. DEFINITIONS -- V. (1) "Variable load suspension axle" means an axle or axles designed to support a part of the vehicle and load and which can be regulated to vary the amount of load supported by such an axle or axles and which can be deployed or lifted by the operator of the vehicle. See also section 49-117, Idaho Code.

(a) "Fully raised" means that the variable load suspension axle is in an elevated position preventing the tires on such axle from having any contact with the roadway.

(b) "Fully deployed" means that the variable load suspension axle is supporting a portion of the weight of the loaded vehicle as controlled by the preset pressure regulator valve.

(2) "Vehicle" means:

(a) General. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(b) Authorized emergency vehicle. Vehicles operated by any fire department or law enforcement agency of the state of Idaho or any political subdivision of the state, ambulances, vehicles belonging to personnel of voluntary fire departments while in performance of official duties only, vehicles belonging to, or operated by EMS personnel certified or otherwise recognized by the EMS bureau of the Idaho department of health and welfare while in the performance of emergency medical services, sheriff's search and rescue vehicles which are under the immediate supervision of the county sheriff, wreckers which are engaged

in motor vehicle recovery operations and are blocking part or all of one (1) or more lanes of traffic, other emergency vehicles designated by the director of the Idaho state police or vehicles authorized by the Idaho transportation board and used in the enforcement of laws specified in section 40-510, Idaho Code, pertaining to vehicles of ten thousand (10,000) pounds or greater.

(c) Commercial vehicle or commercial motor vehicle. For the purposes of chapters 3 and 9 of this title, driver's licenses and vehicle equipment, a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

- ~~1.~~(i) Has a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds inclusive of a towed unit with a manufacturer's gross vehicle weight rating (GVWR) of more than ten thousand (10,000) pounds; or
- ~~2.~~(ii) Has a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds; or
- ~~3.~~(iii) Is designed to transport sixteen (16) or more people, including the driver; or
- ~~4.~~(iv) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the hazardous material transportation act and which require the motor vehicle to be placarded under the hazardous materials regulations (49 CFR part 172, subpart F).

For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a vehicle or combination of vehicles of a type used or maintained for the transportation of persons for hire, compensation or profit, or the transportation of property for the owner of the vehicle, or for hire, compensation, or profit, and shall include fixed load specially constructed vehicles exceeding the limits imposed by chapter 10, title 49, Idaho Code, and including drilling rigs, construction, drilling and wrecker cranes, log jammers, log loaders, and similar vehicles which are normally operated in an overweight or oversize condition or both, but shall not include those vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code, or exempted by section 49-426, Idaho Code. A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen (15) persons, including the driver, shall not be a "commercial vehicle" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

(d) Farm vehicle. A vehicle or combination of vehicles owned by a farmer or rancher, which are operated over public highways, and used exclusively to transport unprocessed agricultural, dairy or livestock products raised, owned and grown by the owner of the vehicle to market or place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies or products purchased by that farmer or rancher for his own use, and used in the farming or ranching operation or used by a farmer partly in transporting agricultural products or livestock from the farm of another farmer that were originally grown or raised on the farm, or when used partly in transporting agricultural supplies, equipment, materials or livestock to the farm of another farmer for use or consumption on the farm but not transported for hire, and shall not include vehicles of husbandry or vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code.

(e) Foreign vehicle. Every vehicle of a type required to be registered under the provisions of this title brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(f) Glider kit vehicle. Every large truck manufactured from a kit manufactured by a manufacturer of large trucks which consists of a frame, cab complete with wiring, instruments, fenders and hood and front axles and wheels. The "glider kit" is made into a complete assembly by the addition of the engine, transmission, rear axles, wheels and tires.

(g) Motor vehicle. Every vehicle which is self-propelled, and for the purpose of titling and registration meets federal motor vehicle safety standards as defined in section 49-107, Idaho Code. Motor vehicle does not include vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.

(h) Multipurpose passenger vehicle (MPV). For the purposes of section 49-966, Idaho Code, a motor vehicle designed to carry ten (10) or fewer persons which is constructed either on a truck chassis or with special features for occasional off-road operation.

(i) Neighborhood electric vehicle (NEV). A self-propelled, electrically-powered, four-wheeled motor vehicle which is emission free and conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low-speed vehicles under federal regulations at 49 CFR part 571. An NEV shall be titled, registered and insured according to law as provided respectively in chapters 4, 5 and 12, title 49, Idaho Code, and shall only be operated by a licensed driver. Operation of an NEV on a highway shall be allowed as provided in section 49-663, Idaho Code.

(j) Noncommercial vehicle. For the purposes of chapter 4, title 49, Idaho Code, motor vehicle registration, a noncommercial vehicle shall not include those vehicles required to be registered under sections 49-402 and 49-402A, Idaho Code, and means all other vehicles or combinations of vehicles which are not commercial vehicles or farm vehicles, but shall include motor homes. A noncommercial vehicle shall include those vehicles having a combined gross weight not in excess of sixty thousand (60,000) pounds and not held out for hire, used for purposes related to private use and not used in the furtherance of a business or occupation for compensation or profit or for transporting goods for other than the owner.

(k) Passenger car. For the purposes of section 49-966, Idaho Code, a motor vehicle, except a multipurpose passenger vehicle, motorcycle or trailer, designed to carry ten (10) or fewer persons.

(l) Rebuilt salvage vehicle. Every vehicle that has been rebuilt or repaired using like make and model parts and visually appears as a vehicle that was originally constructed under a distinctive manufacturer. This includes a salvage vehicle which is damaged to the extent that a "re-built salvage" brand is required to be added to the title.

(m) Reconstructed vehicles. Vehicles which have been reconstructed by the use of a kit designed to be used to construct an exact replica of a vehicle which was previously constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles. A glider kit vehicle is not a reconstructed vehicle.

(~~mn~~) Replica vehicle. A vehicle made to replicate any passenger car or truck previously manufactured, using metal, fiberglass or other composite materials. Replica vehicles must look like the original vehicle being replicated but may use a more modern drive train. At a minimum, replica vehicles shall meet the same federal motor vehicle safety and emission standards in effect for the year and type of vehicle being replicated.

(~~no~~) Salvage vehicle. Any vehicle for which a salvage certificate, salvage bill of sale or other documentation showing evidence that the vehicle has been declared salvage or which has been damaged to the

extent that the owner, or an insurer, or other person acting on behalf of the owner, determines that the cost of parts and labor minus the salvage value makes it uneconomical to repair or rebuild. When an insurance company has paid money or has made other monetary settlement as compensation for a total loss of any vehicle, such vehicle shall be considered to be a salvage vehicle.

(~~op~~) Specially constructed vehicle. Every vehicle of a type required to be registered not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction and cannot be visually identified as a vehicle produced by a particular manufacturer. This includes:

~~1-~~(i) A vehicle that has been structurally modified so that it does not have the same appearance as a similar vehicle from the same manufacturer; or

~~2-~~(ii) A vehicle that has been constructed entirely from homemade parts and materials not obtained from other vehicles; or

~~3-~~(iii) A vehicle that has been constructed by using major component parts from one (1) or more manufactured vehicles and cannot be identified as a specific make or model; or

~~4-~~(iv) A vehicle constructed by the use of a custom kit that cannot be visually identified as a specific make or model. All specially constructed vehicles of a type required to be registered shall be certified by the owner to meet all applicable federal motor vehicle safety standards in effect at the time construction is completed, and all requirements of chapter 9, title 49, Idaho Code.

(q) Specialty off-highway vehicle. A specialty off-highway vehicle as defined in section 67-7101, Idaho Code.

(~~pr~~) Total loss vehicle. Every vehicle that is deemed to be uneconomical to repair. A total loss shall occur when an insurance company or any other person pays or makes other monetary settlement to the owner when it is deemed to be uneconomical to repair the damaged vehicle. The compensation for total loss as defined herein shall not include payments by an insurer or other person for medical care, bodily injury, vehicle rental or for anything other than the amount paid for the actual damage to the vehicle.

(3) "Vehicle identification number." (See "Identifying number," section 49-110, Idaho Code)

(4) "Vehicle salesman" means any person who, for a salary, commission or compensation of any kind, is employed either directly or indirectly, or regularly or occasionally by any dealer to sell, purchase or exchange, or to negotiate for the sale, purchase or exchange of vehicles. (See also "full-time salesman," section 49-107, Idaho Code, and "part-time salesman," section 49-117, Idaho Code)

(5) "Vessel." (See section 67-7003, Idaho Code)

(6) "Veteran." (See section 65-502, Idaho Code)

(7) "Violation" means a conviction of a misdemeanor charge involving a moving traffic violation, or an admission or judicial determination of the commission of an infraction involving a moving traffic infraction, except bicycle infractions.

SECTION 6. That Section 49-302, Idaho Code, be, and the same is hereby amended to read as follows:

49-302. WHAT PERSONS ARE EXEMPT FROM LICENSE. The following persons are exempt from licensing if driving privileges are not suspended, canceled, revoked, disqualified, denied or refused:

(1) Any person while driving or operating any farm tractor or implement of husbandry when incidentally operated on a highway.

(2) Farmers are exempt from obtaining a class A, B or C driver's license to operate a commercial motor vehicle which is:

- (a) Controlled and operated by a farmer, including operation by employees or family members; and
- (b) Used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm; and
- (c) Not used in the operations of a common or contract motor carrier; and
- (d) Used within one hundred fifty (150) miles of the person's farm.

(3) Any person is exempt from obtaining a class A, B or C driver's license for the operation of commercial motor vehicles which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulations.

(4) Any person is exempt from obtaining a class A, B or C license to operate a commercial vehicle which is exclusively used to transport personal possessions or family members for nonbusiness or recreational purposes.

(5) A nonresident who is at least fifteen (15) years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may operate a motor vehicle in Idaho only as a class D operator with driving privileges restricted to daylight hours only except as provided in section 49-307(9), Idaho Code, and with full privileges at sixteen (16) years of age, and only if Idaho residency is not established.

(6) A nonresident who is at least fifteen (15) years of age and who has in his possession a valid driver's license with a motorcycle endorsement or who has a valid motorcycle driver's license issued to him in his home state or country may operate a motorcycle in Idaho with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age.

(7) A nonresident who has in his immediate possession a valid commercial driver's license issued to him in his home state or country may operate a motor vehicle in Idaho.

(8) A nonresident on active duty in the armed forces of the United States who has a valid driver's license issued by his home jurisdiction, and such nonresident's spouse or dependent son or daughter who has a valid driver's license issued by such person's home jurisdiction.

(9) Any active duty military personnel, active duty U.S. coast guard personnel, and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training and national guard military technicians who as civilians are required to wear military uniforms and are subject to the code of military justice, are exempt from obtaining a commercial driver's license to operate military vehicles. This exemption does not apply to U.S. reserve technicians.

(10) Any person with a valid driver's license issued in their name is exempt from the requirement to obtain a motorcycle endorsement on the license when operating a motorcycle on highways or sections of highways designated for unregistered motorcycle use under section 49-426(3), Idaho Code.

(11) Any person under the age of sixteen (16) years when operating an ATV, UTV, specialty off-highway vehicle or motorbike on roads on federal or state land where the road is not part of the highway system of the state of Idaho or any political subdivision thereof when the person is supervised by a licensed adult operator and the road is open for such use.

SECTION 7. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck, each neighborhood electric vehicle and each other motor

vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds and that complies with the federal motor vehicle safety standards as defined in section 49-107, Idaho Code, shall be:

Vehicles one (1) and two (2) years old	\$48.00
Vehicles three (3) and four (4) years old	\$36.00
Vehicles five (5) and six (6) years old	\$36.00
Vehicles seven (7) and eight (8) years old	\$24.00
Vehicles over eight (8) years old	\$24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars (\$24.00).

(3) For all motorcycles and motor-driven cycles which comply with the federal motor vehicle safety standards, operated upon the public highways the annual fee shall be nine dollars (\$9.00).

(4) For operation of an all-terrain vehicle, utility type vehicle or motorbike, excluding a motorbike with an engine displacement of fifty (50) cubic centimeters or less, on ~~public lands~~ city, county or highway district roads or highways open to such use, a restricted vehicle license plate fee pursuant to section 49-450, Idaho Code, shall be paid. In addition, the registration fee specified in section 67-7122, Idaho Code, shall be paid as provided in section 67-7122, Idaho Code. The registration and restricted vehicle license plate exemption provided in section 49-426(2), Idaho Code, applies to all-terrain vehicles, utility type vehicles, motorbikes and motorcycles used for the purposes described in subsection (2) of section 49-426, Idaho Code. Nonresidents shall be allowed to purchase a restricted vehicle license plate and sticker for an all-terrain vehicle, utility type vehicle or motorbike.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other

fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(8) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars (\$25.00) and an annual program fee of fifteen dollars (\$15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416, 49-418 and 49-418D, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars (\$25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-415C, 49-415D, 49-415E, 49-416A, 49-416B, 49-416C, 49-416D, 49-416E, 49-417, 49-417A, 49-417B, 49-417C, 49-417D, 49-417E, 49-418A, 49-418B, 49-418C, 49-418E, 49-419, 49-419A, 49-419B, 49-419C, 49-419D, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, 49-420E and 49-420G, Idaho Code, there shall be an initial program fee of thirty-five dollars (\$35.00) and an annual program fee of twenty-five dollars (\$25.00). The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law.

(~~8~~9) Any vehicle that does not meet federal motor vehicle safety standards shall not be registered and shall not be permitted to operate on public highways of the state, as defined in section 40-117, Idaho Code, unless otherwise specifically authorized.

SECTION 8. That Section 49-426, Idaho Code, be, and the same is hereby amended to read as follows:

49-426. EXEMPTIONS FROM OPERATING FEES. The provisions of this chapter with respect to operating fees shall not apply to:

(1) Motor vehicles owned or leased by the United States, the state, a city, a county, any department thereof, any political subdivision or municipal corporation of the state, any taxing district of the state, any state registered nonprofit subscription fire protection unit, or any organization, whether incorporated or unincorporated, organized for the operation, maintenance, or management of an irrigation project or irrigation works or system or for the purpose of furnishing water to its members or shareholders, but in other respects shall be applicable.

(2) Farm tractors, implements of husbandry, those manufactured homes which qualify for an exemption under the provisions of section 49-422, Idaho Code, road rollers, wheel mounted tar buckets, portable concrete and/or mortar mixers, wheel mounted compressors, tow dollies, portable toilet trailers, street sweepers, and similar devices as determined by the department which are temporarily operated or moved upon the highways need not be registered under the provisions of this chapter, nor shall implements of husbandry be considered towed units under registration of vehicle combinations as defined in section 49-108(2), Idaho Code. In addition, self-propelled wheelchairs, three-wheeled bicycles, wheelchair conveyances, golf carts, lawn mowers, and scooters operated by persons who by reason of physical disability are otherwise unable to move about as pedestrians shall be exempt from registration requirements under the provisions of this chapter. Motorcycles, motorbikes, utility type vehicles and all-terrain vehicles need not be licensed under the provisions of this chapter or registered pursuant to the provisions of section 67-7122, Idaho Code, if they are being used exclusively in connection with agricultural, horticultural, dairy and livestock growing and feeding operations or used exclusively for snow removal purposes. Travel upon the public highways shall be limited to travel between

farm or ranch locations. Motorcycles, motorbikes, utility type vehicles and all-terrain vehicles used for this purpose shall meet the emblem requirements of section 49-619, Idaho Code.

(3) Any political subdivision of the state of Idaho may, but only after sufficient public notice is given and a public hearing held, adopt local ordinances or resolutions designating highways or sections of highways under its jurisdiction which are closed to all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes licensed pursuant to this chapter and registered pursuant to section 67-7122, Idaho Code, ~~and those vehicles exempt from licensing and registration pursuant to subsection (2) of this section.~~ The operation of licensed and registered all-terrain vehicles, utility type vehicles and motorbikes and those vehicles exempt from licensing and registration pursuant to subsection (2) of this section shall not be permitted on controlled access highways. The requirements of title 18 and chapters 2, 3, 6, 8, 12, 13 and 14, title 49, Idaho Code, shall apply to the operation of any licensed and registered all-terrain vehicle, utility type vehicle or motorbike ~~or those vehicles exempt from licensing and registration pursuant to subsection (2) of this section~~ upon highways ~~that are not closed to such vehicles.~~ Costs related to the posting of signs on highways or sections of highways that are closed to such vehicles, indicating the ordinance, are eligible for reimbursement through the motorbike recreation account created in section 67-7126, Idaho Code.

(4) The Idaho transportation board may designate sections of state highways over which all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes ~~licensed pursuant to this chapter and registered pursuant to section 67-7122, Idaho Code, and those vehicles exempt from licensing and registration pursuant to subsection (2) of this section~~ may cross. The requirements of title 18, and chapters 2, 3, 6, 8, 12, 13 and 14, title 49, Idaho Code, shall apply to the operation of ~~licensed and registered~~ all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes ~~and those vehicles exempt from licensing and registration pursuant to subsection (2) of this section~~ when using designated crossings on state highways.

(5) ~~Subject to the licensing requirement provided for in section 49-402(4), Idaho Code,~~ All-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes may be used on unpaved highways located on state ~~public~~ lands or federal ~~public~~ lands which are not part of the highway system of the state of Idaho, provided the registration requirements of section 67-7122, Idaho Code, are met.

SECTION 9. That Section 49-456, Idaho Code, be, and the same is hereby amended to read as follows:

49-456. VIOLATIONS OF REGISTRATION PROVISIONS. It shall be unlawful for any person:

(1) To operate or for the owner to permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered and which does not have attached and displayed the license plates assigned to it for the current registration year, subject to the exemptions allowed in sections 49-426, 49-431 and 49-432, Idaho Code.

(2) To operate or for the owner to permit the operation on state and federal ~~public~~ lands or upon highways, or sections of highways, as permitted under section 49-426(3) and (4), Idaho Code, any all-terrain vehicle, utility type vehicle or motorbike that does not have a valid and properly displayed restricted license plate issued pursuant to this chapter and attached registration sticker issued pursuant to section 67-7122, Idaho Code, subject to the exemptions allowed in section 49-426(2), Idaho Code.

(3) To display or cause or permit to be displayed, or to have in possession any registration card or license plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(4) To lend or knowingly permit the use by one not entitled to any registration card or license plate issued to the person so lending or permitting that use.

(5) To fail or refuse to surrender to the department, upon demand, any registration card or license plate which has been suspended, canceled or revoked.

(6) To use a false or fictitious name or address in any application for the registration of any vehicle or for any renewal or duplicate, or knowingly to make a false statement or conceal a material fact or otherwise commit a fraud in any application.

SECTION 10. That Section 49-948, Idaho Code, be, and the same is hereby amended to read as follows:

49-948. RESTRICTIONS AS TO TIRE EQUIPMENT. (1) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(2) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the highway.

(3) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, spike, or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except as allowed herein. It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and it shall be permissible to use tire chains. Tires with built-in lugs of tungsten carbide or other suitable material, hereinafter called studs, may be used upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid, that will not unduly damage the highway. Motor vehicles, trailers and semitrailers with tires having built-in studs are prohibited on public highways between the dates of May 1 and September 30, annually, except as provided in paragraphs (a), (b) and (c) of this subsection:

(a) Fire pumper/tanker trucks and ladder trucks belonging to fire departments and firefighting agencies are exempt from the prohibited dates.

(b) A vehicle may be equipped year-round with tires that have retractable studs if the studs retract pneumatically or mechanically to at or below the wear bar of the tire when not in use and the retractable studs protrude beyond the wear bar of the tire only between October 1 and April 30. Retractable studs may be made of metal or other material and are not subject to the stud weight requirements of subsection (4) of this section.

(c) Special exemptions from the prohibited dates may be granted by the Idaho transportation board if it is found by the board that enhancements to public safety outweigh the increased pavement wear.

(4) Commercial tire retailers shall not sell studded tires with studs exceeding the following weight and protrusion limitations after July 1, 2005. Commercial tire retailers and tire shops shall not manually install studs exceeding the following weight and protrusion limitations after July 1, 2005.

(a) Studs shall not protrude more than six-hundredths (.06) of an inch from the surface of the tire tread when originally installed.

(b) Stud size shall be as recommended by the manufacturer of the tire for the type and size of the tire.

(c) Studs shall individually weigh no more than one and one-half (1.5) grams if the stud is size 14 or less.

(d) Studs shall individually weigh no more than two and three-tenths (2.3) grams if the stud size is 15 or 16.

(e) Studs shall individually weigh no more than three (3) grams if the stud size is 17 or larger.

(5) If the Idaho transportation department determines, at any time, that Lookout Pass or Fourth of July Pass on interstate 90 or Lolo Pass on state highway 12 is of an unsafe condition so as to require chains, as defined in section 49-104, Idaho Code, in addition to pneumatic tires, the Idaho transportation department may establish requirements for the use of chains on all commercial vehicles as defined in section 49-123(2)(c) ~~1-(i)~~ and ~~2-(ii)~~, Idaho Code, traveling on interstate 90 or state highway 12. If the Idaho transportation department establishes that chains are so required, the Idaho transportation department shall:

(a) Provide multiple advance notices of the chain requirement;

(b) Provide adequate opportunities for pull out;

(c) Provide notification at a point at which the commercial vehicle can safely pull out of the normal flow of traffic, prior to the point at which chains are required; and

(d) In no case post requirements for chains on bare pavement.

(6) Provided that the conditions in subsection (5) of this section are met, the chain requirement shall be met by chaining a minimum of one (1) tire on each side of:

(a) One (1) drive axle, regardless of the number of drive axles; and

(b) One (1) axle at or near the rear of each towed vehicle. Such axle shall not include a variable load suspension axle or an axle of a converter dolly.

(7) Chains as required in subsection (6) (a) and (b) of this section mean "chains" as defined in section 49-104, Idaho Code. Any other traction device differing from chains in construction, material or design but capable of providing traction equal to or exceeding that of chains under similar conditions may be used.

(8) The Idaho transportation department shall place and maintain signs and other traffic control devices on the interstate and state highway passes as designated in subsection (5) of this section that indicate the chain requirements under subsection (6) of this section.

(9) Exempt from the chaining requirements provided for in subsections (5) and (6) of this section are:

(a) Motor vehicles operated by the Idaho transportation department when used in the maintenance of the interstate or state highway system; and

(b) The following:

(i) Motor vehicles employed solely in transporting school children and teachers to or from school or to or from approved school activities, when the motor vehicle is either:

1. Wholly owned and operated by such school; or

2. Leased or contracted by such school and the motor vehicle is not used in furtherance of any other commercial enterprise;

(ii) Motor vehicles controlled and operated by any farmer when used in the transportation of the farmer's farm equipment or in the transportation of supplies to the farmer's farm;

(iii) The transportation of agricultural products including fresh fruits and vegetables, livestock, livestock feed or manure at any time of the year;

(iv) Motor propelled vehicles for the sole purpose of carrying United States mail or property belonging to the United States;

(v) Motor carriers transporting products of the forest at any time of the year, including chip trucks;

- (vi) Motor carriers transporting products of the mine including sand, gravel and aggregates thereof, excepting petroleum products; and
- (vii) Vehicles properly equipped, designed and customarily used for the transportation of disabled or abandoned vehicles by means of a crane, hoist, tow bar, dolly or roll bed, commonly known as a "wrecker truck" or "tow truck."

SECTION 11. That Section 67-7101, Idaho Code, be, and the same is hereby amended to read as follows:

67-7101. DEFINITIONS. In this chapter:

(1) "All-terrain vehicle (ATV)" means any recreation vehicle with three (3) or more tires, under nine hundred (900) pounds and fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, ~~traveling on low pressure tires of ten (10) psi or less~~, has handlebar steering and a seat designed to be straddled by the operator.

(2) "Board" means the park and recreation board created under authority of section 67-4221, Idaho Code.

(3) "Bona fide snowmobile program" means services or facilities as approved by the department that will benefit snowmobilers such as snowmobile trail grooming, plowing and maintaining snowmobile parking areas and facilities, and trail signing.

(4) "Dealer" means any person who engages in the retail sales of or rental of snowmobiles, motorbikes, utility type vehicles or all-terrain vehicles.

(5) "Department" means the Idaho department of parks and recreation.

(6) "Designated parking area" means an area located, constructed, maintained, and signed with the approval of the land manager or owner.

(7) "Director" means the director of the department of parks and recreation.

(8) "Highway." (See section 40-109, Idaho Code, but excepting public roadway as defined in this section)

(9) "Motorbike" means any self-propelled two (2) wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trials bikes, motocross bikes or dual purpose motorcycles.

(10) "Off-highway vehicle" means an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in this section.

(11) "Operator" means any person who is in physical control of a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile.

(12) "Owner" means every person holding record title to a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile and entitled to the use or possession thereof, other than a lienholder or other person having a security interest only.

(13) "Person" means an individual, partnership, association, corporation, or any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(14) "Public roadway" means all portions of any highway which are controlled by an authority other than the Idaho transportation department.

(15) "Snowmobile" means any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight, designed primarily for travel on snow or ice or over natural terrain, which may be steered by tracks, skis, or runners.

(16) "Specialty off-highway vehicle" means any vehicle manufactured, designed or constructed exclusively for off-highway operation that does not fit the definition of an all-terrain vehicle, utility type vehicle or motor-

bike as defined in this section. The vehicle classification provided for in this subsection shall become effective on January 1, 2010.

(157) "Utility type vehicle (UTV)" means any recreational motor vehicle other than an ATV, motorbike or snowmobile as defined in this section, designed for and capable of travel over designated ~~unpaved~~ roads, traveling on four (4) or more ~~low pressure tires of twenty (20) psi or less~~, maximum width less than seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds, ~~or~~ and having a wheelbase of ~~ninety-four~~ one hundred ten (94110) inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in section 49-110(2), Idaho Code, or vehicles otherwise registered under title 49, Idaho Code.

(168) "Vendor" means any entity authorized by the department to sell recreational registrations.

(179) "Winter recreational parking locations" means designated parking areas established and maintained with funds acquired from the cross-country skiing account.

SECTION 12. That Section 67-7105, Idaho Code, be, and the same is hereby amended to read as follows:

67-7105. GOVERNMENT OWNERSHIP. Certificate of number and registration portions of this chapter shall not apply to snowmobiles, all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes owned and operated by the federal government, a state government or a subdivision of it.

SECTION 13. That Section 67-7114, Idaho Code, be, and the same is hereby amended to read as follows:

67-7114. OPERATION UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCE. Any person driving or operating a snowmobile, motorbike, utility type vehicle, specialty off-highway vehicle or all-terrain vehicle under the influence of alcohol, drugs or any other intoxicating substance on a public roadway or highway, ~~as authorized in this chapter or in section 49-426(3) and (4), Idaho Code,~~ or off road off-highway shall be guilty of a misdemeanor.

SECTION 14. That Section 67-7122, Idaho Code, be, and the same is hereby amended to read as follows:

67-7122. REQUIREMENTS -- REGISTRATION -- PROCEDURE. (1) On or before January 1 of each year, the owner of any all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in section 67-7101, Idaho Code, or any motorcycle as defined in section 49-114, Idaho Code, used off public highways, on ~~unpaved~~ highways located on state ~~public~~ lands or federal ~~public~~ lands which are not part of the highway system of the state of Idaho or on highways as prescribed in section 49-426(3) and (4), Idaho Code, but excluding those vehicles used exclusively on private land for agricultural use or used exclusively for snow removal purposes as provided in section 49-426(2), Idaho Code, shall register that vehicle ~~with the county assessor or other county motor vehicle office as may be designated by the county assessor~~ at any vendor authorized by the department. Effective January 1, 2010, a fee of ten twelve dollars (\$102.00) shall be charged for each registration, which fee includes a one dollar and fifty cent (\$1.50) fee to be retained by the ~~county assessor~~ vendor and the remainder of which

shall be remitted to the department together with a duplicate copy of the application form, noting the number of the registration sticker issued.

(2) At the time of sale from any dealer, eEach motorbike, all-terrain vehicle or utility type vehicle sold to an Idaho resident, but excluding those vehicles to be used exclusively on private land for agricultural use or used exclusively for snow removal purposes as provided in section 49-426(2), Idaho Code, must be registered.

(a) Application blanks and registration stickers shall be supplied by the department and the registration sticker shall be issued to the person making application for registration.

(b) All registration stickers which are issued shall be in force through December 31 of the issued year. All registration stickers shall be renewed by the owner of the all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle in the same manner provided for in the initial securing of the same or with any vendor authorized by the department. A vendor issuing a renewal registration sticker shall retain a one dollar and fifty cent (\$1.50) vendor fee and remit the remainder of the ~~ten~~ twelve dollar (\$~~10~~2.00) renewal registration sticker fee to the department together with a duplicate copy of the application form, noting the number of the registration sticker issued.

(c) The issued registration sticker shall be placed upon the restricted vehicle license plate of the all-terrain vehicle, motorbike or utility type vehicle, or upon the license plate right fork of a vehicle registered pursuant to section 49-402(3), Idaho Code, or of a motorbike if used exclusively off-highway, or upon the rear fender of an all-terrain vehicle, specialty off-highway vehicle or utility type vehicle if used exclusively off-highway. The placement shall be made in such a manner that it is completely visible, does not cover the license plate numbers or letters, if licensed, and shall be kept in a legible condition at all times.

(3) For operation of a motorbike that meets the requirements specified in section 49-114(10), Idaho Code, on the public highways, the vehicle shall also be registered pursuant to the provisions of section 49-402(3), Idaho Code. A motorbike that meets the requirements specified in section 49-114(10), Idaho Code, and that is registered pursuant to section 49-402(3), Idaho Code, shall not be required to obtain a restricted license plate pursuant to section 49-402(4), Idaho Code. A motorbike, all-terrain vehicle, specialty off-highway vehicle or utility type vehicle operated exclusively off-highway or on highways located on state lands or federal lands which are not part of the highway system of the state of Idaho and that meet the registration requirements specified in this section shall not be required to obtain a restricted vehicle license plate pursuant to section 49-402(4), Idaho Code.

(4) Nonresidents shall be allowed to purchase a restricted vehicle license plate pursuant to section 49-402(4), Idaho Code, and/or a sticker for an all-terrain vehicle, motorbike or utility type vehicle.

SECTION 15. That Section 67-7124, Idaho Code, be, and the same is hereby amended to read as follows:

67-7124. NONRESIDENT -- EXEMPTION. (1) The provisions of section 67-7122, Idaho Code, regarding registration shall not apply to any nonresident owner; provided that if a nonresident owner operates the vehicle for over thirty (30) days within this state he shall be subject to the registration provisions of law the all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or motorbike is currently and properly registered in the state of residence. Owners of an all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or motorbike from states that do

not have a registration requirement shall be registered in Idaho under the provisions of section 67-7122, Idaho Code, prior to operation in this state.

(2) Nonresidents with an all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or motorbike registered in another state shall have the same use privileges and responsibilities as a resident of this state with a properly registered vehicle.

SECTION 16. That Section 67-7126, Idaho Code, be, and the same is hereby amended to read as follows:

67-7126. ESTABLISHMENT OF ACCOUNT -- DISTRIBUTION OF FEES. There is established in the state treasurer's office an account to be known and designated as the "motorbike recreation account." The ~~ten~~ twelve dollar (\$102.00) fee collected for off-highway vehicle registration stickers shall be allocated as follows:

(1) Vendors shall charge and retain one dollar and fifty cents (\$1.50) for a handling fee;

(2) Up to fifteen percent (15%) shall be allotted to the department for administration and for the production of registration stickers, which moneys shall be placed in the motorbike recreation account. The department shall annually publish a report specifically identifying the uses of account moneys;

(3) One dollar (\$1.00) shall be deposited into the off-highway vehicle law enforcement fund. Moneys in said fund shall be paid and used as follows:

(a) Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program recognized by the department shall receive moneys from the fund based upon a formula as provided in rule promulgated by the board; and

(b) Moneys from the fund shall be used only for off-highway related law enforcement activities; and

(4) One dollar (\$1.00) shall be allocated to the Idaho department of lands to provide off-highway vehicle opportunities and to repair damage directly related to off-highway vehicle use. The department of lands shall annually publish a report specifically identifying the uses of moneys allocated pursuant to this subsection; and

(5) The remaining funds shall be transmitted to the state treasurer's office for deposit to the credit of the motorbike recreation account, all such moneys to be transmitted to the state treasurer on or before the ~~10th~~ tenth day of each month.

Collection of fees for off-highway vehicle registration shall not impose any additional liability on the state of Idaho or any of its political subdivisions or upon the employees of the state and of its political subdivisions, and those entities and persons shall retain the limitations of liability provided by section 36-1604, Idaho Code, regardless of the use of such fees.

SECTION 17. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 15 of this act shall be in full force and effect on and after passage and approval. Section 16 of this act shall be in full force and effect on and after January 1, 2010.

Approved April 9, 2009.

CHAPTER 158
(S.B. No. 1111)

AN ACT

RELATING TO INSURANCE AND PUBLIC SAFETY OFFICERS; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1352A, IDAHO CODE, TO PROVIDE FOR A PUBLIC SAFETY OFFICER PERMANENT DISABILITY BENEFIT, TO PROVIDE REQUIREMENTS RELATING TO THE PUBLIC SAFETY OFFICER PERMANENT DISABILITY BENEFIT AND TO PROVIDE LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 59-1352A, Idaho Code, and to read as follows:

59-1352A. PUBLIC SAFETY OFFICER PERMANENT DISABILITY BENEFIT. (1) A public safety officer who is ruled by the retirement system to be permanently disabled, as provided in section 59-1302(12), on or after July 1, 2009, as a result of bodily injury or disease sustained in the line of duty is eligible for a one-time permanent disability benefit in the amount of one hundred thousand dollars (\$100,000), which shall be payable as provided in this section to the permanently disabled public safety officer.

(2) Public safety officers who qualify and who seek the benefit under this section shall apply to the retirement board. No benefit shall be payable unless the retirement board determines that:

(a) The permanent disability occurred in the line of duty;

(b) The permanent disability was not caused by the intentional misconduct of the public safety officer or by the public safety officer's intentional infliction of injury; and

(c) The public safety officer was not voluntarily intoxicated at the time of the event causing the permanent disability.

(3) As used in this section, "public safety officer" means an active member of the retirement system who, when injured:

(a) Was designated as a police officer member under section 59-1303, Idaho Code;

(b) Was a firefighter as defined in section 59-1302(16), Idaho Code; or

(c) Was a paid firefighter as defined in section 72-1403(A), Idaho Code.

(4) The benefit payable under this section is as follows:

(a) Separate from and independent of any benefits payable to the public safety officer under this chapter;

(b) Not dependent upon years of service or age of the public safety officer; and

(c) Shall not be subject to state income taxes.

(5) It is the intent of the legislature that this benefit shall be funded solely by public safety officers in perpetuity, and not by an employer, as defined in section 59-1302(15), Idaho Code. Therefore, the costs associated with providing this benefit, as determined by the board, shall be paid solely by the public safety officers.

Approved April 9, 2009.

CHAPTER 159
(S.B. No. 1131)

AN ACT

RELATING TO MOTOR VEHICLE FINANCIAL RESPONSIBILITY; AMENDING SECTION 49-1223, IDAHO CODE, TO PROVIDE CERTAIN EXCEPTIONS TO THE APPLICATION OF CERTAIN CHAPTER SECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1223, Idaho Code, be, and the same is hereby amended to read as follows:

49-1223. EXCEPTIONS FROM CHAPTER. (1) This chapter shall not apply with respect to any motor vehicle owned by the United States, the state, any municipality or other political subdivision.

(2) Sections 49-1212, 49-1229, 49-1230 and 49-1232, Idaho Code, shall not apply to vehicles defined in section 67-7101, Idaho Code, provided that the owner or operator of such vehicle has procured other liability insurance applicable to the use of the vehicle upon public roads consistent with section 49-1428, Idaho Code. Such other liability insurance coverage is not required to meet the policy requirements stated in sections 49-1212 and 49-1229, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 9, 2009.

CHAPTER 160
(H.B. No. 212)

AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS; AMENDING SECTION 33-5205, IDAHO CODE, TO PROVIDE FOR NOTICE RELATING TO A PETITION FOR A NON-VIRTUAL PUBLIC CHARTER SCHOOL, TO PROVIDE FOR CERTAIN COMMENTS, TO PROVIDE FOR NOTICE TO THE PUBLIC CHARTER SCHOOL COMMISSION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 33-5209, IDAHO CODE, TO PROVIDE FOR A HEARING, TO PROVIDE FOR NOTICE TO THE BOARD OF THE LOCAL SCHOOL DISTRICT AND TO PROVIDE FOR CERTAIN COMMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-5205, Idaho Code, be, and the same is hereby amended to read as follows:

33-5205. PETITION TO ESTABLISH PUBLIC CHARTER SCHOOL. (1) Any group of persons may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school.

(a) A petition to establish a new public charter school, including a public virtual charter school, shall be signed by not fewer than thirty (30) qualified electors of the attendance area designated in the petition. Proof of elector qualifications shall be provided with the petition.

(b) A petition to establish a new public virtual school must be submitted directly to the public charter school commission. A petition to

establish a new public charter school, other than a new public virtual school, shall first be submitted to the local board of trustees in which the public charter school will be located. A petition shall be considered to be received by an authorized chartering entity as of the next scheduled meeting of the authorized chartering entity after submission of the petition.

(c) The board of trustees may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter; or (iii) refer the petition to the public charter school commission, but such referral shall not be made until the local board has documented its due diligence in considering the petition. Such documentation shall be submitted with the petition to the public charter school commission. If the petitioners and the local board of trustees have not reached mutual agreement on the provisions of the charter, after a reasonable and good faith effort, within sixty (60) days from the date the charter petition is received, the petitioners may withdraw their petition from the local board of trustees and may submit their charter petition to the public charter school commission, provided it is signed by thirty (30) qualified electors as required by subsection (1) (a) of this section. Documentation of the reasonable and good faith effort between the petitioners and the local board of trustees must be submitted with the petition to the public charter school commission.

(d) The public charter school commission may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter.

(e) A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by not fewer than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not fewer than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(2) Not later than sixty (60) days after receiving a petition signed by thirty (30) qualified electors as required by subsection (1) (a) of this section, the authorized chartering entity shall hold a public hearing for the purpose of discussing the provisions of the charter, at which time the authorized chartering entity shall consider the merits of the petition and the level of employee and parental support for the petition. In the case of a petition submitted to the public charter school commission, such public hearing must be not later than sixty (60) days after receipt of the petition, which may be extended to ninety (90) days if both parties agree to an extension, ~~and the~~. In the case of a petition for a non-virtual public charter school submitted to the public charter school commission, the board of the district in which the proposed public charter school will be physically located, shall be notified of the hearing in writing, by the public charter school commission, no less than thirty (30) days prior to the public hearing. Such public hearing shall also include any oral or written comments that an authorized representative of the school district in which the proposed public charter school would be physically located may provide regarding the merits of the petition and any potential impacts on the school district. The hearing shall also include any oral or written comments that petitioners may provide regarding any potential impacts on such school district. If the school district chooses not to provide any oral or written comments as provided for in this subsection (2), such school district shall notify the public charter school commission of such decision. Following re-

view of the petition and the public hearing, the authorized chartering entity shall either approve or deny the charter within sixty (60) days after the date of the public hearing, provided however, that the date may be extended by an additional sixty (60) days if the petition fails to contain all of the information required in this section, or if both parties agree to the extension. This public hearing shall be an opportunity for public participation and oral presentation by the public. This hearing is not a contested case hearing as described in chapter 52, title 67, Idaho Code.

(3) An authorized chartering entity may approve a charter under the provisions of this chapter only if it determines that the petition contains the requisite signatures, the information required by subsections (4) and (5) of this section, and additional statements describing all of the following:

(a) The proposed educational program of the public charter school, designed among other things, to identify what it means to be an "educated person" in the twenty-first century, and how learning best occurs. The goals identified in the program shall include how all educational thoroughness standards as defined in section 33-1612, Idaho Code, shall be fulfilled.

(b) The measurable student educational standards identified for use by the public charter school. "Student educational standards" for the purpose of this chapter means the extent to which all students of the public charter school demonstrate they have attained the skills and knowledge specified as goals in the school's educational program.

(c) The method by which student progress in meeting those student educational standards is to be measured.

(d) A provision by which students of the public charter school will be tested with the same standardized tests as other Idaho public school students.

(e) A provision which ensures that the public charter school shall be state accredited as provided by rule of the state board of education.

(f) The governance structure of the public charter school including, but not limited to, the person or entity who shall be legally accountable for the operation of the public charter school, and the process to be followed by the public charter school to ensure parental involvement.

(g) The qualifications to be met by individuals employed by the public charter school. Instructional staff shall be certified teachers as provided by rule of the state board of education.

(h) The procedures that the public charter school will follow to ensure the health and safety of students and staff.

(i) A plan for the requirements of section 33-205, Idaho Code, for the denial of school attendance to any student who is an habitual truant, as defined in section 33-206, Idaho Code, or who is incorrigible, or whose conduct, in the judgment of the board of directors of the public charter school, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public charter school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state.

(j) Admission procedures, including provision for overenrollment. Such admission procedures shall provide that the initial admission procedures for a new public charter school, including provision for overenrollment, will be determined by lottery or other random method, except as otherwise provided herein. If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent

(10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; and third, an equitable selection process such as by lottery or other random method. If capacity is insufficient to enroll all pupils for subsequent school terms, who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; and fourth, an equitable selection process such as by lottery or other random method. There shall be no carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies which become available.

(k) The manner in which an annual audit of the financial and programmatic operations of the public charter school is to be conducted.

(l) The disciplinary procedures that the public charter school will utilize, including the procedure by which students may be suspended, expelled and reenrolled, and the procedures required by section 33-210, Idaho Code.

(m) A provision which ensures that all staff members of the public charter school will be covered by the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance, and health insurance.

(n) The public school attendance alternative for students residing within the school district who choose not to attend the public charter school.

(o) A description of the transfer rights of any employee choosing to work in a public charter school that is approved by the board of trustees of a school district, and the rights of such employees to return to any noncharter school in the same school district after employment at such charter school.

(p) A provision which ensures that the staff of the public charter school shall be considered a separate unit for purposes of collective bargaining.

(q) The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act, including disciplinary procedures for these students.

(r) A plan for working with parents who have students who are dually enrolled pursuant to section 33-203, Idaho Code.

(s) The process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school.

(t) A proposal for transportation services as required by section 33-5208(4), Idaho Code.

(u) A plan for termination of the charter by the board of directors, to include:

(i) Identification of who is responsible for dissolution of the charter school;

(ii) A description of how payment to creditors will be handled;

(iii) A procedure for transferring all records of students with notice to parents of how to request a transfer of student records to a specific school; and

(iv) A plan for the disposal of the public charter school's assets.

(4) The petitioner shall provide information regarding the proposed operation and potential effects of the public charter school including, but

not limited to, the facilities to be utilized by the public charter school, the manner in which administrative services of the public charter school are to be provided and the potential civil liability effects upon the public charter school and upon the authorized chartering entity.

(5) At least one (1) person among a group of petitioners of a prospective public charter school shall attend a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held, and shall provide proof of attendance to workshop attendees. Such proof shall be submitted by the petitioners to an authorized chartering entity along with the charter petition.

(56) The public charter school commission may approve a charter for a public virtual school under the provisions of this chapter only if it determines that the petition contains the requirements of subsections (3) and (4) of this section and the additional statements describing the following:

- (a) The learning management system by which courses will be delivered;
- (b) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;
- (c) A plan for the provision of professional development specific to the public virtual school environment;
- (d) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely, frequent feedback about student progress;
- (e) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;
- (f) A plan for the provision of technical support relevant to the delivery of online courses;
- (g) The means by which the public virtual school will provide opportunity for student-to-student interaction; and
- (h) A plan for ensuring equal access to all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.

SECTION 2. That Section 33-5209, Idaho Code, be, and the same is hereby amended to read as follows:

33-5209. ENFORCEMENT -- REVOCATION -- APPEAL. (1) An authorized chartering entity shall ensure that all public charter schools for which it approved petitions, or for which it has responsibility, operate in accordance with the approved charter. A public charter school or the authorized chartering entity may enter into negotiations to revise its charter at any time. A public charter school may petition to revise its charter at any time. The authorized chartering entity's review of the revised petition shall be limited in scope solely to the proposed revisions. In those instances where a non-virtual public charter school submits a proposed charter revision to the public charter school commission and such revision includes a proposal to increase such public charter school's approved student enrollment cap by ten percent (10%) or more, the commission shall hold a public hearing on such petition. The public charter school commission shall provide the board of the local school district in which the public charter school is physically located, notice in writing of such hearing, no later than thirty (30) days prior to the hearing. The public hearing shall include any oral or written comments that an authorized representative of the school district in which the public charter school is physically located may provide regarding the impact of the proposed charter revision upon the school district. Such

public hearing shall also include any oral or written comments that any petitioner may provide regarding the impact of the proposed charter revision upon such school district.

(2) If the authorized chartering entity has reason to believe that the public charter school has done any of the following, it shall provide the public charter school written notice of the defect and provide a reasonable opportunity to cure the defect:

- (a) Committed a material violation of any condition, standard or procedure set forth in the approved charter;
- (b) Failed to substantially meet any of the student educational standards identified in the approved charter;
- (c) Failed to meet generally accepted accounting standards of fiscal management;
- (d) Failed to demonstrate fiscal soundness. In order to be fiscally sound, the public charter school must be:
 - (i) Fiscally stable on a short-term basis, that is, able to service all upcoming obligations; and
 - (ii) Fiscally sustainable as a going concern, that is, able to reasonably demonstrate its ability to service any debt and meet its financial obligations for the next fiscal year;
- (e) Failed to submit required reports to the authorized chartering entity governing the charter; or
- (f) Violated any provision of law.

(3) A charter may be revoked by the authorized chartering entity if the public charter school has failed to cure a defect after receiving reasonable notice and having had a reasonable opportunity to cure the defect. Revocation may not occur until the public charter school has been afforded a public hearing and a reasonable opportunity to cure the defect, unless the authorized chartering entity reasonably determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately. Public hearings shall be conducted by the governing authorized chartering entity, or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with section 67-5242, Idaho Code. Reasonable notice and opportunity to reply shall include, at a minimum, written notice setting out the basis for consideration of revocation, a period of not less than thirty (30) days within which the public charter school can reply in writing, and a public hearing within thirty (30) days of the receipt of the written reply.

(4) A decision to revoke a charter or to deny a revision of a charter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section 33-5207(5)(b), Idaho Code. In the event the state board of education reverses a decision of revocation, the public charter school subject to such action shall then be placed under the chartering authority of the commission.

Approved April 9, 2009.

CHAPTER 161
(S.B. No. 1142)

AN ACT

RELATING TO OPEN PUBLIC MEETINGS; AMENDING SECTION 67-2343, IDAHO CODE, TO AMEND PROVISIONS RELATING TO NOTICE REQUIREMENTS FOR MEETINGS AND AGENDAS; AMENDING SECTION 67-2344, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE WRITTEN MINUTES OF MEETINGS; AMENDING SECTION 67-2345, IDAHO

CODE, TO REVISE PROVISIONS RELATING TO EXECUTIVE SESSIONS; AND AMENDING SECTION 67-2347, IDAHO CODE, TO REVISE PROVISIONS RELATING TO VIOLATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2343, Idaho Code, be, and the same is hereby amended to read as follows:

67-2343. NOTICE OF MEETINGS -- AGENDAS. (1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. ~~A forty-eight (48) hour agenda notice shall be required in advance of each regular meeting, however, additional agenda items may be added after completion of the agenda up to and including the hour of the meeting, provided that a good faith effort is made to include in the notice all agenda items known at the time to be probable items of discussion.~~ The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

SECTION 2. That Section 67-2344, Idaho Code, be, and the same is hereby amended to read as follows:

67-2344. WRITTEN MINUTES OF MEETINGS. (1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes of pertaining to executive sessions. Minutes pertaining to an executive session shall be limited to include a specific reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to convey the general subject matter identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

SECTION 3. That Section 67-2345, Idaho Code, be, and the same is hereby amended to read as follows:

67-2345. EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) ~~Nothing contained in this act shall be construed to prevent, upon a two-thirds (2/3) vote recorded in the minutes of the meeting by individual vote, a governing body of a public agency from holding an executive session during any meeting, after the presiding officer has identified the authorization by specific reference to one (1) or more of paragraphs (a) through (j) of this subsection for the holding of such executive session.~~ An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;
- (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or

controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code;

(i) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(j) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

SECTION 4. That Section 67-2347, Idaho Code, be, and the same is hereby amended to read as follows:

67-2347. VIOLATIONS. (1) If an action, or any deliberation or ~~decision-making~~ decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who ~~knowingly~~ conducts or participates in a meeting which violates the provisions of this act shall be subject to a fine civil penalty not to exceed one hundred fifty dollars (\$150.00) for a first violation and not to exceed three hundred dollars (\$300) for each subsequent violation as a civil penalty.

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(46) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court

of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the ~~violation or alleged violation of~~ decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) (a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a) (i) or (a) (ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7) (a) (i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

Approved April 13, 2009.

CHAPTER 162
(H.B. No. 43)

AN ACT

RELATING TO THE DEPARTMENT OF COMMERCE AND INNOVATION; AMENDING SECTION 49-416C, IDAHO CODE, TO PROVIDE FOR AN INNOVATION MOTOR VEHICLE LICENSE PLATE AND TO DIRECT THE ALLOCATION OF REVENUE DERIVED FROM SUCH LICENSE PLATES; AMENDING SECTION 67-4725, IDAHO CODE, TO PROVIDE FOR THE IDAHO INNOVATION FUND; AND AMENDING SECTION 67-4726, IDAHO CODE, TO REVISE TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-416C, Idaho Code, be, and the same is hereby amended to read as follows:

49-416C. ~~SCIENCE AND TECHNOLOGY INNOVATION~~ PLATES. (1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special ~~science and technology innovation~~ license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of ~~science and technology innovation~~ license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars (\$35.00) for the initial issuance of plates, and twenty-five dollars (\$25.00) upon each succeeding annual registration. Ten dollars (\$10.00) of the initial fee and ten dollars (\$10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars (\$25.00) of each initial fee and fifteen dollars (\$15.00) of each renewal fee shall be transferred by the state treasurer for deposit to the ~~office of science and technology~~ Idaho innovation fund created in section 67-4725, Idaho Code, and shall be used by the ~~science technology commercial innovation~~ division of the department of commerce for attracting ~~science and technology innovation~~ companies to locate or to expand their operations in Idaho.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(4) The ~~science and technology innovation~~ license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The design and any slogan on the plate shall be acceptable to the director of the department of commerce and shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the department of commerce.

(5) Sample ~~science and technology innovation~~ license plates may be purchased for a fee of thirty dollars (\$30.00), ten dollars (\$10.00) of which shall be deposited in the state highway account and twenty dollars (\$20.00) of which shall be transferred to the ~~office of science and technology~~ Idaho innovation fund, and shall be used by the ~~office~~ commercial innovation division for attracting ~~science and technology innovation~~ companies to locate or to expand their operations in Idaho.

SECTION 2. That Section 67-4725, Idaho Code, be, and the same is hereby amended to read as follows:

67-4725. ~~OFFICE OF SCIENCE AND TECHNOLOGY IDAHO INNOVATION~~ FUND. There is hereby created in the state treasury the ~~office of science and technology~~ Idaho innovation fund. Moneys in the fund shall consist of funds received pursuant to section 49-416C, Idaho Code, grants, federal moneys, donations or funds from any other source. Moneys in the fund may be expended pursuant to appropriation. The fund balance in the fund may be appropriated annually to the ~~office of science and technology~~ department of commerce, ~~commercial innovation division~~. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

SECTION 3. That Section 67-4726, Idaho Code, be, and the same is hereby amended to read as follows:

67-4726. ~~SCIENCE AND TECHNOLOGY ADVISORY~~ IDAHO INNOVATION COUNCIL -- APPOINTMENT OF MEMBERS -- QUALIFICATIONS. (1) The state of Idaho recognizes that the health and expansion of Idaho's future economy will depend upon taking full advantage of research and technology, and that Idaho has impressive resources for ~~technology~~ innovation-based growth, internationally recognized university research programs, globally competitive ~~technology~~ innovation companies and the Idaho national laboratory.

The ~~science and technology advisory~~ Idaho innovation council is hereby created to advise the department of commerce, the state board of education, state colleges and universities, and other state, local, federal and private sector agencies and organizations on ~~science and technology~~ innovation interests and potentials; to support the development and publishing of information on the condition and importance of ~~science and technology~~ innovation to the state's economy; to assist with the development and implementation of a state strategic plan for ~~science and technology~~ innovation; and to assist with the coordination of local, state and federal interests to increase the positive economic impact of the state's ~~science and technology~~ innovation resources.

(2) The council shall be appointed by and serve at the pleasure of the governor. Membership of the council shall include individuals knowledgeable and experienced in ~~science and technology~~ innovation issues. The council shall include representatives from the private sector who have expertise in the transfer and commercialization of ~~science and~~ technology, and representatives from the department of commerce, the office of the state board of education, and the office of the governor. The governor shall designate a chairman from the council's private-sector membership and the council shall designate such other officers from its membership as it deems necessary. The chairman and council members from the department of commerce, the ~~office of the~~ state board of education, and the office of the governor shall serve as the executive committee of the council. The council shall be staffed and supported by the department of commerce, commercial innovation division. Members of the council who are not state employees shall be compensated for actual and necessary expenses as provided by section 59-509(b), Idaho Code.

Approved April 14, 2009.

CHAPTER 163

(H.B. No. 141, As Amended in the Senate)

AN ACT

RELATING TO FLOATING HOMES; AMENDING SECTION 63-201, IDAHO CODE, TO REVISE THE DEFINITION OF "FLOATING HOME" AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-201, Idaho Code, be, and the same is hereby amended to read as follows:

63-201. DEFINITIONS. As used for property tax purposes in title 63, chapters 1 through 23, Idaho Code, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Appraisal" means an estimate of property value for property tax purposes.

(a) For the purpose of estimated property value to place the value on any assessment roll, the value estimation must be made by the assessor or a certified property tax appraiser.

(b) For the purpose of estimating property value to present for an appeal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code, the value estimation may be made by the assessor, a certified property tax appraiser, a licensed appraiser, or a certified appraiser or any party as specified by law.

(2) "Bargeline" means those water transportation tugs, boats, barges, lighters and other equipment and property used in conjunction with waterways for bulk transportation of freight or ship assist.

(3) "Cogenerators" means facilities which produce electric energy, and steam or forms of useful energy which are used for industrial, commercial, heating or cooling purposes.

(4) "Collection costs" are amounts authorized by law to be added after the date of delinquency and collected in the same manner as property tax.

(5) "Credit card" means a card or device, whether known as a credit card or by any other name, issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise.

(6) "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.

(7) "Delinquency" means any property tax, special assessment, fee, collection cost, or charge collected in the same manner as property tax, that has not been paid in the manner and within the time limits provided by law.

(8) "Electronic funds transfer" means any transfer of funds that is initiated by electronic means, such as an electronic terminal, telephone, computer, ATM or magnetic tape.

(9) "Fixtures" means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by having been physically incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property, the use or purpose of such articles is integral to the use of the real property to which it is affixed, and a person would reasonably be considered to intend to make the articles permanent additions to the real property. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building. "Fixtures" does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles.

(~~7~~10) "Floating home" means a floating structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, ~~has no mode of power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.~~

(~~8~~11) "Improvements" means all buildings, structures, manufactured homes, as defined in section 39-4105(8), Idaho Code, mobile homes as defined in section 39-4105(9), Idaho Code, and modular buildings, as defined in section 39-4301(7), Idaho Code, erected upon or affixed to land, fences, water ditches constructed for mining, manufacturing or irrigation purposes, fixtures, and floating homes, whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed or attached. The term "improvements" also includes all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

(~~10~~92) "Late charge" means a charge of two percent (2%) of the delinquency.

(~~11~~03) "Lawful money of the United States" means currency and coin of the United States at par value and checks and drafts which are payable in dollars of the United States at par value, payable upon demand or presentment.

(124) "Legal tender" means lawful money as defined in subsection (143) of this section.

13(1415) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

(1526) "Operating property" means real and personal property operated in connection with any public utility, railroad or private railcar fleet, wholly or partly within this state, and which property is necessary to the maintenance and operation of the public utility, railroad or private railcar fleet, and the roads or lines thereof, and includes all rights-of-way accompanied by title; roadbeds; tracks; pipelines; bargelines; equipment and docks; terminals; rolling stock; equipment; power stations; power sites; lands; reservoirs, generating plants, transmission lines, distribution lines and substations; and all title and interest in such property, as owner, lessee or otherwise. The term includes electrical generation plants under construction, whether or not owned by or operated in connection with any public utility. For the purpose of the appraisal, assessment and taxation of operating property, pursuant to chapter 4, title 63, Idaho Code, the value of intangible personal property shall be excluded from the taxable value of operating property in accordance with the provisions of section 63-602L, Idaho Code, and the value of personal property, other than intangible personal property, shall be excluded from the taxable value of operating property in accordance with the provisions of section 63-602KK, Idaho Code.

(1637) "Party in interest" means a person who holds a properly recorded mortgage, deed of trust or security interest.

(1748) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho.

(1859) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property."

(19620) "Private railcar fleet" means railroad cars or locomotives owned by, leased to, occupied by or franchised to any person other than a railroad company operating a line of railroad in Idaho or any company classified as a railroad by the interstate commerce commission and entitled to possess such railroad cars and locomotives except those possessed solely for the purpose of repair, rehabilitation or remanufacturing of such locomotives or railroad cars.

(2071) "Public utility" means electrical companies, pipeline companies, natural gas distribution companies, or power producers included within federal law, bargelines, and water companies which are under the jurisdiction of the Idaho public utilities commission. The term also includes telephone corporations, as that term is defined in section 62-603, Idaho Code, except as hereinafter provided, whether or not such telephone corporation has been issued a certificate of convenience and necessity by the Idaho public utilities commission.

This term does not include cogenerators, mobile telephone service or companies, nor does it include pager service or companies, except when such services are an integral part of services provided by a certificated utility company, nor does the term "public utility" include companies or persons engaged in the business of providing solely on a resale basis, any telephone or telecommunication service which is purchased from a telephone corporation or company.

(2182) "Railroad" means every kind of railway, whether its line of rails or tracks be at, above or below the surface of the earth, and without regard to the kind of power used in moving its rolling stock, and shall be considered to include every kind of street railway, suburban railway or interur-

ban railway excepting facilities established solely for maintenance and rebuilding of railroad cars or locomotives.

(2293) "Real property" means land and all rights and privileges thereto belonging or any way appertaining, all quarries and fossils in and under the land, and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, improvements and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in chapter 17, title 63, Idaho Code, and timber, forest, forest land, and forest products shall be defined as provided in chapter 17, title 63, Idaho Code.

(2304) "Record owner" means the person or persons in whose name or names the property stands upon the records of the county recorder's office. Where the record owners are husband and wife at the time of notice of pending issue of tax deed, notice to one (1) shall be deemed and imputed as notice to the other spouse.

(2415) "Special assessment" means a charge imposed upon property for a specific purpose, collected and enforced in the same manner as property taxes.

(2526) "System value" means the market value for assessment purposes of the operating property when considered as a unit.

(2637) "Tax code area" means a geographical area made up of one (1) or more taxing districts with one (1) total levy within the geographic area, except as otherwise provided by law.

(2748) "Taxing district" means any entity or unit with the statutory authority to levy a property tax.

(2859) "Taxable value" means market value for assessment purposes, less applicable exemptions or other statutory provisions.

(29630) "Transient personal property" is personal property, specifically such construction, logging or mining machinery and equipment which is kept, moved, transported, shipped, hauled into or remaining for periods of not less than thirty (30) days, in more than one (1) county in the state during the same year.

(3071) "Warrant of distraint" means a warrant ordering the seizure of personal property to enforce payment of property tax, special assessment, expense, fee, collection cost or charge collected in the same manner as personal property tax.

Approved April 14, 2009.

CHAPTER 164
(H.B. No. 173)

AN ACT

RELATING TO THE DEPARTMENT OF ADMINISTRATION AND GROUP INSURANCE; AMENDING SECTION 67-5333, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE USE OF UNUSED SICK LEAVE BY THE IDAHO PUBLIC EMPLOYEE RETIREMENT BOARD TO PAY CERTAIN INSURANCE PREMIUMS; AMENDING SECTION 67-5761, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION REGARDING GROUP INSURANCE AND TO REVISE PROVISIONS RELATING TO GROUP INSURANCE COVERAGE FOR CERTAIN RETIREES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5333, Idaho Code, be, and the same is hereby amended to read as follows:

67-5333. SICK LEAVE. (1) Sick leave shall be computed as follows:

(a) The rate per hour at which sick leave shall accrue to classified officers and employees earning credited state service shall be at the rate represented by the proportion 96/2080. Sick leave shall accrue without limit, and shall be transferable from department to department.

(b) Sick leave shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Sick leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time is taken.

(c) All accrued sick leave shall be forfeited at the time of separation from state service and no officer or employee shall be reimbursed for accrued sick leave at the time of separation, except as provided in subsection (2) of this section. If such officer or employee returns to credited state service within three (3) years of such separation, all sick leave credits accrued at the time of separation shall be reinstated, except to the extent that unused sick leave was utilized for the purposes specified in subsection (2) of this section.

(d) Sick leave shall be taken on a workday basis. Regularly scheduled days off and officially designated holidays falling within a period of sick leave shall not be counted against sick leave. Sick leave shall not be taken in advance of being earned and shall only be taken in pay periods subsequent to being earned.

(e) In cases where absences for sick leave exceed three (3) consecutive working days, the appointing authority may require verification by a physician or other authorized practitioner.

(f) If an absence for illness or injury extends beyond the sick leave accrued to the credit of the officer or employee, the officer or employee may be granted leave without pay.

(g) The administrator shall prescribe additional requirements for sick leave for classified officers and employees on a part-time or irregular schedule, for maintaining sick leave records, for funeral leave, and such other applicable purposes as necessary.

(2) Unused sick leave may be used as follows:

(a) Upon separation from state employment by retirement in accordance with chapter 13, title 59 or chapter 1, title 33, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, and shall be reported by the employer to the public employee retirement system. Upon separation from state employment by retirement in accordance with chapter 20, title 1, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 2000, and shall be reported by the employer to the public employee retirement system. A sum equal to one-half (1/2), or the maximum amount allowed by paragraph (b) of this subsection (2), whichever is the lesser, of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by paragraph (c) of this subsection (2) and shall be credited to such employee's retirement account. Such sums shall be used by the Idaho public employee retirement board to pay premiums, as permitted by and subject to applicable federal tax laws and limits, for such ~~group~~ health, dental, vision, long-term care, prescription drug and life insurance programs as may be maintained by the state, to the extent of the funds credited to the employee's account pursuant to this section. Upon an employee's death, any unexpended sums remaining in the account shall revert to the sick leave account.

(b) For the purposes of determining the monetary value of unused sick leave, the maximum unused sick leave which may be considered, shall be:

(i) During the first ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be four hundred twenty (420) hours;

(ii) During the second ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be four hundred eighty (480) hours;

(iii) During the third ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be five hundred forty (540) hours; and

(iv) Thereafter, the maximum unused sick leave which may be considered shall be six hundred (600) hours.

(c) Each employer in state government shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in section 59-1305, Idaho Code. Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget. The state insurance fund and public health districts shall be considered employers in state government for purposes of participation under this section.

SECTION 2. That Section 67-5761, Idaho Code, be, and the same is hereby amended to read as follows:

67-5761. POWERS AND DUTIES -- GROUP INSURANCE. (1) The director of the department of administration shall ~~have the authority to:~~

(a) Establish an advisory committee to be comprised of program participants from the executive, legislative and judicial branches of state government. The advisory committee ~~may~~ shall include one (1) active and one (1) retired employee representatives. The director shall consult with the advisory committee in the performance of those duties as enumerated in subsection (2) of this section.

(b) ~~Fix and p~~ Promulgate rules for determining eligibility of active personnel, retired personnel and dependents of such active and retired personnel for participation in any group plans.

(c) Determine the nature and extent of needs for group life insurance, group annuities, group disability insurance, and group health care service coverages with respect to personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho and retired personnel, the premiums or prepayments for which are payable in whole or in part from funds of the state. "Disability" insurance includes all personal accident, health, hospital, surgical, and medical coverages, and "health care service" includes all services rendered for maintenance of good health and diagnosis, relief, or treatment of any injury, ailment, or bodily condition.

(d) Determine the types, terms, conditions, and amounts of group insurance, group annuities, or group coverage by health care service organizations, as the case may be, required by such needs.

(e) Negotiate and contract for, and have placed or continued in effect all such insurance and coverages as may reasonably be obtainable from insurers and health care service organizations, as the case may be, duly authorized to transact such business in this state. The director may negotiate deductibles to any group plan or coverage. Alternatively, the director may self-insure any insurance or coverage and may contract with any insurance company or third party administrator duly authorized to transact business in this state or administer such plan.

(f) Prepare or otherwise obtain and make available to all personnel affected thereby, printed information concerning all such group plans currently in effect, together with the rules governing eligibility, payment of premium or prepayment where applicable, claims procedures, and other matters designed to facilitate utilization and administration of such plans.

(g) Administer all such group plans on behalf of the insured, including but not limited to:

(i) Enrollment and reporting to the insurer or health care service organization of individuals eligible for coverage and covered under particular policies or contracts, and termination of such enrollment upon termination of eligibility;

(ii) Collection or payment of premiums or prepayments for such coverage, policies and contracts and accounting for the same;

(iii) Establishment of reasonable procedures for handling claims arising under such coverage, policies and contracts, and rendering assistance to claimants, as may be required in the presentation and consideration of claims;

(iv) Effectuation of changes in such coverage, policies and contracts and renewal or termination thereof;

(v) Making and settlement of claims.

~~(2) Nothing herein shall be deemed to prohibit any such coverage, policy or contract providing coverage also for dependents of personnel under terms and conditions formulated and negotiated by the director~~ The director shall formulate and negotiate a plan or plans of health care service coverage which includes eligible active personnel and their dependents in consultation with the advisory committee.

~~(3) The director shall formulate and negotiate a plan or plans of health care service coverage which includes eligible retired personnel and dependents, eligible for a retirement benefit through the Idaho public employee retirement system which benefit equals or exceeds the retiree medical insurance premium in effect for that retiree at the date of retirement. Coverage for retired personnel shall parallel the coverage provided to active state employees to the extent necessary, and shall include a medicare credit for retirees who are covered by medicare. Any increased cost on the health care plan for active employees as a result of such coverage costs shall be paid for by the state and by active state employees in equal shares. Retired personnel shall be responsible for paying their own premiums for any plan of health care service insurance coverage provided pursuant to this section. Such plan or plans will be pooled for rating purposes with the plan or plans provided for in subsection (2) of this section.~~

(a) Beginning July 1, 2009, the state shall pay one hundred fifty-five dollars (\$155) per eligible retired personnel per month toward such health care service coverage, subject to the conditions of subsection (3)(b) of this section. Retired personnel shall be responsible for paying the balance of the monthly premium for any plan of health care service coverage provided pursuant to this section.

(b) Beginning January 1, 2010, retired personnel health care service coverage shall not be available to any retired personnel or dependent who is or becomes eligible for medicare. Dependent spouses of such medicare eligible retired personnel who are not themselves medicare eligible may remain on health care service coverage until they become eligible for medicare.

(c) Any person who is eligible for health care service coverage as a retired person prior to June 30, 2009, remains eligible for coverage subject to the conditions of subsections (3) (a) and (b) of this section.

(d) No personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, agencies and operations of the government of the state of Idaho, who begin service or employment after June 30, 2009, shall be provided or be eligible for any retired personnel health care service coverage, unless such personnel have credited state service of at least twenty thousand eight hundred (20,800) hours before June 30, 2009, and subsequent to reemployment, election or reappointment on or after July 1, 2009, accumulate an additional six thousand two hundred forty (6,240) continuous hours of credited state service, and who are otherwise eligible for coverage.

(e) Nothing in this subsection prohibits an active employee who retires from state service on or after July 1, 2009, from being eligible for health care service coverage provided that he or she is drawing a state retirement benefit and meets eligibility requirements of the health care service coverage.

(f) The Idaho department of administration shall assist medicare eligible retirees in transitioning to a medicare supplement plan in accordance with procedures established by the advisory committee.

(4) Nothing contained herein and no coverage, policy or contract which provides coverage or benefits for active personnel, dependents of personnel, or retired personnel shall create any vested right or benefit for ~~the retired personnel~~ any such individual in retiree group insurance coverages.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 14, 2009.

CHAPTER 165
(H.B. No. 255)

AN ACT

RELATING TO THE OFFICE OF ENERGY RESOURCES; APPROPRIATING AND PROVIDING FOR THE TRANSFER OF MONEYS FROM THE SUSPENSE FUND; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. Notwithstanding any other provision of law to the contrary, there is hereby appropriated and the State Treasurer shall immediately transfer \$2,120,028.30 from the Suspense Fund (fund 0630, agency 152, subsidiary 1520008) as follows: \$1,200,000 into the Renewable Energy Resources Fund (fund 0199, agency 199) and \$920,028.30 into the General Fund.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 14, 2009.

CHAPTER 166
(S.B. No. 1004, As Amended in the House)

AN ACT

RELATING TO PUNISHMENT FOR MANSLAUGHTER; AMENDING SECTION 18-4006, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 18-4007, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE AMOUNT OF SUPPORT PAID WHEN VEHICULAR MANSLAUGHTER RESULTED IN THE DEATH OF THE PARENT OR PARENTS OF A CHILD AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-4006, Idaho Code, be, and the same is hereby amended to read as follows:

18-4006. MANSLAUGHTER DEFINED. Manslaughter is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, without malice. It is of three (3) kinds:

(1-) Voluntary -- upon a sudden quarrel or heat of passion.

(2-) Involuntary -- in the perpetration of or attempt to perpetrate any unlawful act, other than those acts specified in section 18-4003(d), Idaho Code; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; or in the operation of any firearm or deadly weapon in a reckless, careless or negligent manner which produces death.

(3-) Vehicular -- in which the operation of a motor vehicle is a significant cause contributing to the death because of:

(a) The commission of an unlawful act, not amounting to a felony, with gross negligence; or

(b) The commission of a violation of section 18-8004 or 18-8006, Idaho Code; or

(c) The commission of an unlawful act, not amounting to a felony, without gross negligence.

Notwithstanding any other provision of law, any evidence of conviction under subsection (3-) (b) of this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of subsection (3-) (b) of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

SECTION 2. That Section 18-4007, Idaho Code, be, and the same is hereby amended to read as follows:

18-4007. PUNISHMENT FOR MANSLAUGHTER. Manslaughter is punishable as follows:

(1-) Voluntary -- by a fine of not more than fifteen thousand dollars (\$15,000), or by a sentence to the custody of the state board of correction not exceeding fifteen (15) years, or by both such fine and imprisonment.

(2-) Involuntary -- by a fine of not more than ten thousand dollars (\$10,000), or by a sentence to the custody of the state board of correction not exceeding ten (10) years, or by both such fine and imprisonment.

(3-) Vehicular -- in the operation of a motor vehicle:

(a) For a violation of section 18-4006(3-)(a), Idaho Code, by a fine of not more than ten thousand dollars (\$10,000), or by a sentence to the custody of the state board of correction not exceeding ten (10) years, or by both such fine and imprisonment.

(b) For a violation of section 18-4006(3-)(b), Idaho Code, by a fine of not more than fifteen thousand dollars (\$15,000), or by a sentence to the custody of the state board of correction not exceeding fifteen (15) years, or by both such fine and imprisonment.

(c) For a violation of section 18-4006(3-)(c), Idaho Code, by a fine of not more than two thousand dollars (\$2,000), or by a jail sentence not exceeding one (1) year, or by both such fine and jail sentence.

(d) In addition to the foregoing, any person convicted of a violation of section 18-4006(3-), Idaho Code, which resulted in the death of the parent or parents of minor children may be ordered by the court to pay support for each such minor child until the child reaches the age of eighteen (18) years. ~~Support shall be established in accordance with the child support guidelines then in effect, and~~ In setting the amount of support, the court shall consider all relevant factors. ~~†The non-payment of such support shall be subject to enforcement and collection by the surviving parent or guardian of the child in the same manner that other child support orders are enforced as provided by law. In no event shall the child support judgment or order imposed by the court under this section be paid or indemnified by the proceeds of any liability insurance policy.~~

(e) In addition to the foregoing, the driver's license of any person convicted of a violation of section 18-4006(3-), Idaho Code, may be suspended for a time determined by the court.

Approved April 14, 2009.

CHAPTER 167
(S.B. No. 1011)

AN ACT

RELATING TO THE STATE HISTORICAL SOCIETY; AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE THAT THE IDAHO STATE HISTORICAL SOCIETY IS WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES; AMENDING CHAPTER 41, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4111, IDAHO CODE, TO PROVIDE A DECLARATION OF POLICY; AMENDING CHAPTER 41, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4112, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 67-4123, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE STATE HISTORICAL SOCIETY AND ITS BOARD OF TRUSTEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-4124, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE APPOINTMENT AND TERMS OF BOARD MEMBERS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 33-3901, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE IDAHO ARCHAEOLOGICAL SURVEY AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 33-3902, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 33-3904, IDAHO CODE, TO REVISE A PROVISION RELATING TO CERTAIN REPORTING PROCEDURES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section

20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturistry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board, as provided by chapter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code; and the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; manufactured home advisory board, chapter 21, title 44, Idaho Code; electrical board, chapter 10, title 54, Idaho

Code; public works contractors board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code; and modular buildings, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(f) The Idaho state historical society, pursuant to section 67-4123, Idaho Code.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 2. That Chapter 41, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-4111, Idaho Code, and to read as follows:

67-4111. DECLARATION OF POLICY. (1) The citizens of the state of Idaho have an ongoing appreciation, pride and interest in the history of Idaho and the preservation of Idaho's historic resources. There is a need to enhance the cultural environment of the state of Idaho. Industry, commerce, agriculture and quality of life will be enhanced by the preservation of Idaho's cultural and historic resources and the connection to place.

(2) It is hereby declared to be the policy of the state of Idaho to encourage the preservation of our cultural and historic resources and to assist the society in joining with all persons and institutions concerned with the history of Idaho to ensure that cultural and historic resources are recognized and fostered and will add value to and play a significant role in the welfare and educational experience of Idaho's citizens.

SECTION 3. That Chapter 41, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-4112, Idaho Code, and to read as follows:

67-4112. DEFINITIONS. As used in this chapter:

(1) "Board" means the board of trustees of the Idaho state historical society.

(2) "Historical record" means any record, artifact, object, historical or archaeological site or structure, document, evidence or public or private writing pursuant to the provisions of title 9, Idaho Code, relevant to the history of the state of Idaho.

(3) "Idaho state historical society" and "society" mean the educational institution pursuant to chapter 41, title 67, Idaho Code.

SECTION 4. That Section 67-4123, Idaho Code, be, and the same is hereby amended to read as follows:

67-4123. STATE HISTORICAL SOCIETY -- GOVERNED BY BOARD OF TRUSTEES. The Idaho ~~State~~ ~~Historical~~ ~~Society~~, hereinafter referred to as the society, shall be governed by a board of trustees. The society and its board of trustees, shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be within the ~~office of the state~~

~~board of education~~ department of self-governing agencies. The board shall be responsible for administering the powers and duties required to preserve and protect any historical record of the history and culture of Idaho.

SECTION 5. That Section 67-4124, Idaho Code, be, and the same is hereby amended to read as follows:

67-4124. BOARD OF TRUSTEES -- QUALIFICATIONS, APPOINTMENT AND TERMS OF MEMBERS. The board of trustees shall consist of seven (7) members to be appointed by the ~~state board of education~~ governor. The members of the board shall be chosen with due regard to their knowledge, competence, experience and interest in the fields related to the preservation and promotion of Idaho history. The ~~state board of education~~ governor shall consider geographic representation when selecting board members by appointing one (1) trustee from each of the seven (7) judicial districts as set forth in chapter 8, title 1, Idaho Code. All appointees shall be chosen solely on the basis of their qualifications. The board shall provide the governor with a list of nominated qualified candidates to fill any board vacancy.

All members of the board ~~of trustees~~ shall serve for a specific term. Upon expiration of the terms of members serving on the board ~~of trustees~~ on the effective date of this act, the ~~board~~ governor shall appoint members for a term of six (6) years, except appointments for the unexpired portion of a term. No member shall serve more than two (2) consecutive full terms.

SECTION 6. That Section 33-3901, Idaho Code, be, and the same is hereby amended to read as follows:

33-3901. IDAHO ARCHAEOLOGICAL SURVEY CREATED -- PURPOSE -- DEFINITION -- ADVISORY BOARD. (1) There is hereby created the Idaho archaeological survey, to be administered as a special cooperative program under the authority of the ~~Idaho state board of education~~ board of trustees of the Idaho state historical society and the board of regents of the university of Idaho. It is the policy of the state of Idaho that the archaeological resources recovered from within the state, and their associated documentation, be accorded long-term curation within the state to ensure their continued accessibility by the educational programs of the state universities and for the public benefit of the citizens of the state of Idaho. It is a policy of the state of Idaho that archaeological inventories conducted within the state be documented in a comprehensive database accessible by educational programs and for other public purposes consistent with the protection of these resources. The survey shall be the lead state entity for the compilation, coordination, preservation and dissemination of archaeological survey data and long-term curation of collections for Idaho. This information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies, including the educational programs at the state universities which recover, use and care for archaeological materials. Nothing in this chapter shall limit the established role of the state universities in archaeological research and educational programs using archaeological materials.

(2) For the purposes of this chapter "archaeological resources" refer to both cultural remains and associated environmental materials recovered by archaeological studies and to sites on the landscape containing materials potentially supportive of anthropological or historical archaeological studies.

(3) There is hereby established an advisory board for the survey which shall consist of the following members: the Idaho state archaeologist, who shall be director of the survey and nonvoting chairman of the advisory board, the academic vice presidents of the university of Idaho, Idaho state university and Boise state university or their designated representatives; the

governor of the state of Idaho or his designated representative; and a member of the public who shall be elected by a majority vote of the advisory board and who shall serve for a term of two (2) years. Should a vacancy occur in the public member position, the advisory board shall appoint a replacement to serve the remainder of the term. Members of the advisory board shall be compensated as provided in section 59-509(b), Idaho Code, which compensation shall be paid from the archaeological survey account created in section 33-3905, Idaho Code. A quorum of the advisory board shall be required to be present to conduct business.

SECTION 7. That Section 33-3902, Idaho Code, be, and the same is hereby amended to read as follows:

33-3902. MEETINGS -- OFFICE -- STATE ARCHAEOLOGIST. The advisory board shall hold annual meetings at the Idaho state historical society, the university of Idaho, Idaho state university or Boise state university on the first Monday of June of each year and shall hold such other meetings as it may deem necessary. The chief office of the survey and the office of its secretary shall be maintained at the Idaho state historical society. The professional archaeologist holding the position of state archaeologist in the Idaho state historical society is designated director of the survey.

SECTION 8. That Section 33-3904, Idaho Code, be, and the same is hereby amended to read as follows:

33-3904. REPORTS. The Idaho archaeological survey shall annually, on or before the first day of January, make to the governor of the state and to the ~~executive director of the Idaho state board of education~~ board of trustees of the Idaho state historical society and the board of regents of the university of Idaho a report detailing major events during the preceding year concerning the archaeological resources of the state, a report of its expenditures and of the work of the survey during the preceding year, and budget requests for the following year; and it shall make a similar report of its doings and its expenditures to the state legislature through the legislative council.

Approved April 14, 2009.

CHAPTER 168

(S.B. No. 1074, As Amended, As Amended)

AN ACT

RELATING TO THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND; REPEALING CHAPTER 34, TITLE 33, IDAHO CODE, RELATING TO THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND; AMENDING SECTION 33-905, IDAHO CODE, TO PROVIDE FOR MONEYS TO GO TO ANY SCHOOL FOR THE DEAF AND THE BLIND OPERATED BY THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND; AMENDING SECTION 33-1228, IDAHO CODE, TO INCLUDE EMPLOYEES OF THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND AND TO MAKE A TECHNICAL CORRECTION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 34, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO ESTABLISH THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND, TO PROVIDE A GOAL, TO PROVIDE FOR A BOARD OF DIRECTORS, TO PROVIDE FOR APPOINTMENT OF AN ADMINISTRATOR, TO PROVIDE FOR POWERS AND DUTIES OF THE BOARD OF DIRECTORS, TO PROVIDE FOR A GOVERNMENTAL ENTITY, TO PROVIDE FOR APPLICATION OF CERTAIN PROVISIONS OF IDAHO CODE, TO PROVIDE THAT THE BUREAU SHALL SECURE CERTAIN INSURANCE, TO PROHIBIT CERTAIN ACTS,

TO ESTABLISH A TRUST FUND, TO PROVIDE FOR CONTINUOUS APPROPRIATIONS, TO PROVIDE FOR AN ANNUAL BUDGET MEETING, TO PROVIDE FOR SUBMISSION OF AN ANNUAL BUDGET, TO PROVIDE FOR THE PROMULGATION OF RULES, TO PROVIDE FOR CERTAIN REPORTS RELATING TO DEAF AND BLIND PUPILS, TO PROVIDE FOR THE ACQUISITION OF AND TITLE TO PROPERTY, TO PROVIDE FOR THE TRANSFER OF CERTAIN SICK LEAVE, TO PROHIBIT SECTARIAN TESTS AND TO PROVIDE FOR A GENERAL FUND CONTINGENCY RESERVE; AMENDING SECTION 33-4802, IDAHO CODE, TO DELETE REFERENCE TO THE IDAHO SCHOOL FOR THE DEAF AND BLIND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-4803, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 33-4806, IDAHO CODE, TO PROVIDE REFERENCE TO THE BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND; AND AMENDING SECTION 67-7304, IDAHO CODE, TO PROVIDE REFERENCE TO THE IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 34, Title 33, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 33-905, Idaho Code, be, and the same is hereby amended to read as follows:

33-905. SCHOOL DISTRICT BUILDING ACCOUNT -- PAYMENTS TO ACCOUNT -- MONEYS APPROPRIATED TO STATE BOARD -- APPLICATION FOR MONEYS -- PAYMENTS TO DISTRICTS -- REPORTS ON APPLICATIONS -- USES OF MONEYS. (1) The state of Idaho, in order to fulfill its responsibility to establish and maintain a general, uniform and thorough system of public, free common schools, hereby creates and establishes the school district building account in the state treasury. The school district building account shall have paid into it such appropriations or revenues as may be provided by law.

(2) By not later than August 31, moneys in the account pursuant to distribution from section 67-7434, Idaho Code, the lottery dividends and interest earned thereon, shall be distributed to each of the several school districts, in the proportion that the average daily attendance of that district for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection (2) only, the Idaho school for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in section 33-1002(3), Idaho Code. For the purposes of this subsection (2) only, any school for the deaf and the blind operated by the Idaho bureau of educational services for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school.

(3) Any other state moneys that may be made available shall be distributed to meet the requirements of section 33-1019, Idaho Code. If the amount of such funds exceeds the amount needed to meet the provisions of section 33-1019, Idaho Code, then the excess balance shall be transferred to the public education stabilization fund.

(4) All payments from the school district building account shall be paid out directly to the school district in warrants drawn by the state controller upon presentation of proper vouchers from the state board of education. Pending payments out of the school district building account, the moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be returned to the school district building account.

(5) Payments from the school district building account received by a school district shall be used by the school district for the purposes autho-

rized in section 33-1019, Idaho Code, up to the level of the state match so required. Any payments from the school district building account received by a school district that are in excess of the state match requirements of section 33-1019, Idaho Code, may be used by the school district for the purposes authorized in section 33-1102, Idaho Code.

SECTION 3. That Section 33-1228, Idaho Code, be, and the same is hereby amended to read as follows:

33-1228. SEVERANCE ALLOWANCE AT RETIREMENT. (1) Upon separation from public school employment by retirement in accordance with chapter 13, title 59, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, as provided by section 33-1218, Idaho Code, and shall be reported by the employer to the Idaho public employee retirement system. A sum equal to one-half (1/2) of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by subsection (2) of this section and shall be credited to such employee's retirement account. Such sums shall be used by the retirement board to continue to pay, subject to applicable federal tax limits:

(a) Premiums for the retiree and the retiree's dependents at the rate for the active employee's group health, long-term care, vision, prescription drug and dental insurance programs as maintained by the employer for the active employees until the retiree and/or the retiree's spouse becomes eligible for medicare at which time the district shall make available a supplemental program to medicare for the eligible individual. Upon the death of the retiree the surviving spouse's health coverage shall be available and continued under the same terms and conditions as the retiree. Coverage may be continued for the retiree's surviving dependent spouse and dependents until remarriage of the spouse or until the retiree's surviving dependent spouse is eligible for a group health program by an employer. The medicare supplement program will provide the same premium and benefits for all retirees of all the employers served by the same insurance carrier. However, a school district may make available to all retirees from that district other benefits in addition to the medicare supplement program and the retiree or the district shall pay for such additional benefits.

(b) Premiums at the time of retirement for the retiree for the life insurance program maintained by the employer which may be reduced to a minimum of five thousand dollars (\$5,000) of coverage.

(2) The retiree may continue to pay the premiums for the health, accident, dental and life insurance to the extent of the funds credited to the employee's account pursuant to this section and when these funds are expended the premiums may be deducted from the retiree's allowance. Upon a retiree's death, any unexpended sums remaining in the retiree's account shall revert to the sick leave account. If funds are not available for payment by the Idaho public employee retirement system from the retiree's surviving dependent spouse's allowance, the insurance carrier shall implement a direct billing procedure to permit the retiree's surviving spouse to continue coverage.

(3) Each employer shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in section 59-1305, Idaho Code. Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined

by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget.

(4) For purposes of this section public school employment shall be defined to permit inclusion of employees of organizations funded by school districts or of contributions of employees of school districts and shall include employees of the Idaho bureau of educational services for the deaf and the blind.

SECTION 4. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 34, Title 33, Idaho Code, and to read as follows:

CHAPTER 34

IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND ACT OF 2009

33-3401. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Bureau of Educational Services for the Deaf and the Blind Act of 2009."

33-3402. DEFINITIONS. As used in this chapter:

(1) "Blind or visually impaired" means impacted by an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(2) "Board of directors" also referred to in this chapter as "the board" means the board of directors of the Idaho bureau of educational services for the deaf and the blind as such board is established in section 33-3404, Idaho Code.

(3) "Bureau" means the Idaho bureau of educational services for the deaf and the blind as created in section 33-3403, Idaho Code.

(4) "Deaf or hard of hearing" means impacted by an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, or impacted by a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(5) "Idaho school for the deaf and the blind" means the campus program used to provide residential and day campus instruction and services to deaf or hard of hearing and/or blind or visually impaired students.

(6) "Outreach services" means off-campus statewide supplemental services provided by the Idaho bureau of educational services for the deaf and the blind to school districts, students and families.

(7) "Sensory impairment" means an impairment of vision or hearing, or both.

(8) "Specialized/certified personnel" means all personnel nationally certified and/or certified by the state of Idaho as required by applicable law to provide services and instruction to students who are deaf or hard of hearing and/or blind or visually impaired, including, but not limited to, certified teachers of the deaf, certified teachers of the visually impaired, certified interpreters, certified orientation and mobility specialists, speech language pathologists, and certified low vision therapists.

(9) "State board" means the Idaho state board of education.

(10) "Student" means an individual who is deaf or hard of hearing and/or blind or visually impaired and who qualifies for educational services as

provided for in this chapter pursuant to eligibility criteria set forth in the Idaho standards for infants, toddlers, children, and youth who are deaf or hard of hearing as incorporated by reference in IDAPA 08.02.03.004.08 and 08.02.03.004.09 in effect on January 1, 2009.

(11) "Supplemental services" means services provided to deaf or hard of hearing and/or blind or visually impaired students and their families, in addition to and in support of services the student may receive from his or her school district. Such services may include assessment, consultation and direct instruction.

33-3403. BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND ESTABLISHED -- GOAL. (1) There is hereby established the Idaho bureau of educational services for the deaf and the blind, a provider of supplemental services for students who are deaf or hard of hearing and/or blind or visually impaired. The Idaho bureau of educational services for the deaf and the blind may operate a school for the deaf and the blind at which it shall provide residential and day campus programs. The Idaho bureau of educational services for the deaf and the blind may also operate an outreach program intended to provide services to students outside the campus area, as well as early intervention and family consultation.

(2) The goal of the Idaho bureau of educational services for the deaf and the blind is to assist school districts and state agencies in providing accessibility, quality and equity to students in the state with sensory impairments through a continuum of service and placement options.

33-3404. BOARD OF DIRECTORS. (1) The Idaho bureau of educational services for the deaf and the blind shall be governed by a board of directors which shall be responsible for development and oversight.

(2) The board of directors shall be comprised of eight (8) members as follows:

(a) One (1) member shall be specialized/certified personnel appointed by the governor for a three (3) year term;

(b) One (1) member shall be a director of special education appointed by the governor for a three (3) year term;

(c) Two (2) members shall be citizens at-large appointed by the governor, each for three (3) year terms;

(d) One (1) member shall be a parent of a student who is deaf or hard of hearing or blind or visually impaired appointed by the governor for a three (3) year term;

(e) One (1) member shall be a citizen who is deaf or hard of hearing appointed by the governor for a three (3) year term;

(f) One (1) member shall be a citizen who is blind or visually impaired appointed by the governor for a three (3) year term; and

(g) The state superintendent of public instruction shall be chair of the board and shall serve concurrently with the term of office to which the state superintendent is elected.

(3) For purposes of establishing staggered terms of office, the initial term of office for the citizen who is blind or visually impaired and the parent of a student who is deaf or hard of hearing or blind or visually impaired shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the two (2) members at-large and for the director of special education shall be two (2) years, and thereafter shall be three (3) years. The initial term of office for the citizen who is deaf or hard of hearing and for the specialized/certified personnel shall be three (3) years, and thereafter shall be three (3) years.

(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

33-3405. BOARD OF DIRECTORS TO APPOINT ADMINISTRATOR -- DESIGNATION OF ASSISTANTS -- DUTIES. (1) The board of directors for the Idaho bureau of educational services for the deaf and the blind shall appoint a person to serve as an administrator to the bureau.

(2) The administrator shall designate, by and with the advice and consent of the board of directors, such assistants, instructors, specialists and other employees as may be necessary to properly carry out the provisions of this chapter.

(3) The administrator shall coordinate all efforts in education for the deaf and the blind approved by the board of directors and shall prepare such reports concerning the education for the deaf and the blind in the state as the board of directors may require.

(4) The administrator shall make an annual report of the bureau's activities to the state board of education at a time and in a format designated by the state board of education.

33-3406. POWERS AND DUTIES OF THE BOARD OF DIRECTORS. The board of directors for the Idaho bureau of educational services for the deaf and the blind shall have the following powers and duties:

(1) Recommend policies to be established by rule of the state board of education for effecting the purposes of this chapter.

(2) Operate a school for the deaf and the blind, including but not limited to:

(a) With the advice of the administrator, prescribe the course of study, the textbooks to be used, and for those pupils who complete the requirements for grade twelve (12), the time and standard of graduation;

(b) Upon advice and recommendation from the administrator that any pupil has ceased to make progress, or is no longer being benefited by the school's services, approve release of such pupil from the school and/or discontinue school services;

(c) Maintain general supervision and control of all property, real and personal, appertaining to the school, and to ensure the same;

(d) Employ architects or engineers as necessary in planning the construction, remodeling or repair of any building and, whenever no other agency is designated so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof; and

(e) Provide for the conveyance of pupils to and from the school.

(3) Employ or contract with outreach and other staff as necessary. The Idaho bureau of educational services for the deaf and the blind shall be exempt from the provisions of sections 33-513, 33-514, 33-514A, 33-515 and 33-515A, Idaho Code, and shall be exempt from chapter 53, title 67, Idaho Code. At the discretion of the board, all employees of the Idaho bureau of educational services for the deaf and the blind or a school for the deaf and the blind eligible for benefits may be permitted to elect to receive their salary on a year-round basis. Such a payment schedule shall not be considered a guarantee of employment.

(4) Purchase such supplies and equipment as are necessary to implement the provisions of this chapter, which purchases shall be exempt from the purchasing laws in chapter 57, title 67, Idaho Code.

(5) Enter into contracts with any other governmental or public agency whereby the bureau agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the costs of rendering such service.

(6) Accept, receive and utilize any gifts, grants or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this chapter.

(7) Obtain and maintain facilities to house operations of outreach or supplemental services as needed.

(8) Manage the moneys disbursed to the bureau from any and all sources.

(9) Acquire, by purchase, exchange, or lease any property which in the judgment of the board is needed for the operation of the Idaho bureau of educational services for the deaf and the blind, including a school for the deaf and the blind, and to lease, dispose of, by sale or exchange, any property which in the judgment of the board is not needed for the operation of the same.

(10) Enter into contracts or agreements as may be necessary to carry out the purposes of this chapter.

33-3407. GOVERNMENTAL ENTITY -- LIABILITY -- INSURANCE. (1) The Idaho bureau of educational services for the deaf and the blind shall be a governmental entity as provided in section 33-5502, Idaho Code. For the purposes of section 59-1302(15), Idaho Code, the Idaho bureau of educational services for the deaf and the blind created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-36220, Idaho Code, sales to or purchases by the Idaho bureau of educational services for the deaf and the blind are exempt from payment of the sales and use tax. The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

(a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;

(b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;

(c) Chapter 7, title 59, Idaho Code, on ethics in government;

(d) Chapter 23, title 67, Idaho Code, on open public meetings;

(e) Chapter 3, title 9, Idaho Code, on disclosure of public records;

(f) Section 33-1216, Idaho Code, on sick and other leave;

(g) Section 33-1217, Idaho Code, on accumulation of unused sick leave;

(h) Section 33-1218, Idaho Code, on sick leave in excess of statutory minimum amounts; and

(i) Section 33-1228, Idaho Code, on severance allowance at retirement.

(2) The Idaho bureau of educational services for the deaf and the blind may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(3) The Idaho bureau of educational services for the deaf and the blind shall secure insurance for liability and property loss.

(4) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection

(4). The board of directors of the Idaho bureau of educational services for the deaf and the blind may accept and award contracts involving the Idaho bureau of educational services for the deaf and the blind to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho bureau of educational services for the deaf and the blind for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho bureau of educational services for the deaf and the blind, shall not be deemed

to be a contract pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind within the meaning of this section; nor shall the payment of compensation by the Idaho bureau of educational services for the deaf and the blind board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho bureau of educational services for the deaf and the blind board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho bureau of educational services for the deaf and the blind to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or shall require, the payment or delivery of any Idaho bureau of educational services for the deaf and the blind funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(5) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho bureau of educational services for the deaf and the blind, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

33-3408. EXPENDITURES - BUDGET -- FUNDING. (1) There is hereby created in the state treasury the Idaho bureau of educational services for the deaf and the blind trust fund, which is hereby continuously appropriated to the Idaho bureau of educational services for the deaf and the blind. The fund shall consist of appropriations, fees, grants, gifts or moneys from any other source. The state treasurer shall invest all idle moneys in the fund and interest earned on such investments shall be retained by the fund.

(2) On or before the first Monday in July, there shall be held at the time and place determined by the Idaho bureau of educational services for the deaf and the blind board, a budget meeting and public hearing upon the proposed budget of the Idaho bureau of educational services for the deaf and the blind. Notice of the budget meeting and public hearing shall be posted at least ten (10) full days prior to the date of the meeting in at least one (1) conspicuous place to be determined by the Idaho bureau of educational services for the deaf and the blind board of directors. The place, hour and day of the hearing shall be specified in the notice, as well as the place where such budget may be examined prior to the hearing. On or before the first Monday in July a budget for the Idaho bureau of educational services for the deaf and the blind shall be agreed upon and approved by the majority of the Idaho bureau of educational services for the deaf and the blind board of directors.

(3) The Idaho bureau of educational services for the deaf and the blind shall submit its annual appropriation request to the state superintendent of public instruction, by no later than the first day of August, for the superintendent's review, approval, and inclusion in the budget request of the educational support program/division of children's programs. The state superintendent of public instruction shall disburse any funds appropriated to the Idaho bureau of educational services for the deaf and the blind trust fund. The Idaho bureau of educational services for the deaf and the blind board of directors shall use such moneys to provide supplemental services to deaf or hard of hearing and blind or visually impaired students in the state of Idaho.

33-3409. RULES. The state board of education is authorized to, with the advice and recommendation of the board of directors, promulgate rules to implement the provisions of this chapter.

33-3410. REPORTING DEAF AND BLIND PUPILS. On or before the first day of February, in each year, the clerk of each school district, including elementary school districts, charter schools designated by the state board of education to be identified as a local education agency (LEA) pursuant to section 33-5203, Idaho Code, and especially chartered school districts shall report the number of deaf and blind pupils, as defined in section 33-3402, Idaho Code, attending the school or schools of the district, and any such person, not a pupil in the school, of whom he may have knowledge. Such report shall be made to the Idaho bureau of educational services for the deaf and the blind, upon forms approved by the state board of education.

33-3411. ACQUISITION OF AND TITLE TO PROPERTY. All rights and title to property, real and personal, belonging to the state of Idaho and vested in the Idaho state board of education for use as a school for the deaf and the blind shall remain with the Idaho state board of education.

33-3412. SICK LEAVE TRANSFERRED FOR EMPLOYEES OF IDAHO SCHOOL FOR THE DEAF AND THE BLIND TO IDAHO BUREAU OF EDUCATIONAL SERVICES FOR THE DEAF AND THE BLIND. Notwithstanding any other provision of law to the contrary, any employee of the Idaho school for the deaf and the blind who has accrued sick leave pursuant to section 67-5333, Idaho Code, and who, on or before September 1, 2009, is transferred to or otherwise becomes an eligible employee of the Idaho bureau of educational services for the deaf and the blind shall be credited by the Idaho bureau of educational services for the deaf and the blind with the amount of sick leave accrued and unused at the time of transfer. After such transfer, the use of such sick leave and the accrual of additional sick leave shall be governed by the laws, rules and policies applicable to the Idaho bureau of educational services for the deaf and the blind.

33-3413. SECTARIAN TESTS PROHIBITED. No religious or sectarian tests shall be applied to the admission of students, nor in the selection of instructors or other personnel of the school.

33-3414. GENERAL FUND CONTINGENCY RESERVE. The board of directors for the Idaho bureau of educational services for the deaf and the blind may create and establish a general fund contingency reserve within the annual Idaho bureau of educational services for the deaf and the blind budget. Such general fund contingency reserve shall not exceed five percent (5%) of the total general fund appropriation to the Idaho bureau of educational services for the deaf and the blind. Disbursements from this continuously appropriated fund may be made as the board of trustees determines necessary for contingencies that may arise. The balance of the contingency fund may be accumulated beyond the budgeted fiscal year, but shall never exceed five percent (5%) of the current year's appropriation to the Idaho bureau of educational services for the deaf and the blind.

SECTION 5. That Section 33-4802, Idaho Code, be, and the same is here by amended to read as follows:

33-4802. FINDINGS. The legislature hereby finds, determines and declares that the state of Idaho recognizes the importance of applying technology to meet the public need for an improved, thorough and seamless public education system for elementary and secondary education, education of the hearing or visually impaired ~~at the Idaho school for the deaf and blind, post-secondary~~ postsecondary and higher education and public libraries.

SECTION 6. That Section 33-4803, Idaho Code, be, and the same is hereby amended to read as follows:

33-4803. DEFINITIONS. As used in this chapter:

(1) "Educational segments" are, individually, the public elementary and secondary school system, the Idaho ~~school~~ bureau of educational services for the deaf and the blind, the professional-technical education system, the commission for libraries, the state historical society, Idaho public television, the community colleges, the four-year colleges and universities, the state department of education and the office of the state board of education.

(2) "Libraries" means district, city, school/community libraries, and the commission for libraries as described in chapters 25, 26 and 27, title 33, Idaho Code.

(3) "Technology" means all present and future forms of computer hardware, computer software and services used or required for automated data processing, computer-related office automation or telecommunications.

(4) "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

SECTION 7. That Section 33-4806, Idaho Code, be, and the same is hereby amended to read as follows:

33-4806. PUBLIC SCHOOL TECHNOLOGY GRANTS. There is hereby established the public school technology grant program, which shall make available grants for schools to provide Idaho classrooms, including classrooms at the Idaho ~~school~~ bureau of educational services for the deaf and the blind, with the equipment and resources necessary to integrate information age technology with instruction and to further connect those classrooms with external telecommunications services. Grant applications shall include a project plan that describes proposed equipment and software purchases; how the proposed equipment and software will be used effectively in the classroom; provision for training teachers to make optimal use of the technology; provision for local matching funds as prescribed by the council; and other elements as prescribed by the council.

SECTION 8. That Section 67-7304, Idaho Code, be, and the same is hereby amended to read as follows:

67-7304. COMPOSITION. (1) The council shall consist of nine (9) members to be appointed by the governor.

(2) Membership shall be as follows: one (1) member shall be a deaf person representing an association of the deaf, one (1) member shall be a deaf person, one (1) member shall be the parent of a deaf child, one (1) member shall be a hard of hearing member of a national hard of hearing consumer organization, one (1) member shall be a hard of hearing person over the age of sixty (60) years, one (1) member shall be the parent of a hard of hearing child, one (1) member shall be an interpreter for the deaf, one (1) member shall be a licensed physician, and one (1) member shall be an ASHA certified audiologist.

(3) The following shall serve as ex officio nonvoting members of the council: a representative from each of the following: the Idaho ~~school~~ bureau of educational services for the deaf and the blind, the state department of education, the division of vocational rehabilitation, the office on aging, the department of health and welfare, the bureau of occupational licenses, the department of employment, the public utilities commission, the consumer protection division of the office of the attorney general, the Idaho hearing aid society, and the director of the council for the deaf and hard of hearing.

(4) Due regard shall be given to balanced representation from geographical and demographic areas of the state for voting members of the council.

(5) Voting members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

Approved April 14, 2009.

CHAPTER 169
(S.B. No. 1132)

AN ACT

RELATING TO EDUCATION, SCHOOL DISTRICTS AND PUBLIC SCHOOL BUILDINGS; TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 3, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-356, IDAHO CODE, TO PROVIDE FOR SCHOOL BUILDING DESIGN AND ENERGY EFFICIENCY, TO PROVIDE THAT SCHOOL DISTRICTS MAY SEEK TO QUALIFY FOR REDUCTIONS IN BUILDING REPLACEMENT VALUE CALCULATIONS FOR CERTAIN BUILDINGS, TO PROVIDE FOR THE USE OF INTEGRATED DESIGN PRACTICES AND FUNDAMENTAL COMMISSIONING IN THE DESIGN AND CONSTRUCTION OF CERTAIN BUILDINGS, TO PROVIDE FOR AN OPTIMIZATION REVIEW OF QUALIFYING BUILDINGS, TO PROVIDE DEFINITIONS, TO DIRECT THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY TO PROVIDE CERTAIN ASSISTANCE, TO COMPILE AND MAKE AVAILABLE A LIST OF CERTAIN COMMISSIONING AGENTS AND TO ENSURE THAT SUCH AGENTS ARE CERTIFIED, TO PROVIDE FOR RULES AND TO DIRECT THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY TO PROVIDE CERTAIN CERTIFICATIONS TO THE STATE DEPARTMENT OF EDUCATION; AMENDING SECTION 33-1019, IDAHO CODE, TO EXEMPT CERTAIN SQUARE FOOTAGE OF CERTAIN PUBLIC SCHOOL BUILDINGS FROM REPLACEMENT VALUE CALCULATION, TO PROVIDE THAT THE AMOUNT OF RELIEF PROVIDED TO ANY SCHOOL DISTRICT SHALL NOT EXCEED THE AMOUNT PROVIDED PURSUANT TO A CERTAIN VALUE INDEX, TO PROVIDE PROVISIONS RELATING TO FORGIVENESS OF CERTAIN REQUIREMENTS; TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND TO PROVIDE FOR A REPORT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that:

(1) Every dollar spent on energy costs in an Idaho public school is a dollar that is not spent in the direct education of students in the classroom. As energy costs increase, the diversion of funding away from the classroom will accelerate. The state has a primary interest in minimizing K-12 public school building energy costs since funding for energy comes directly from the state General Fund.

(2) School districts recognize that funding will always be limited and that efficient use of every dollar is vital to providing the highest possible level of educational services. It is apparent that designing and constructing more energy efficient buildings accrue cumulative benefits to both the state and to the school district. This is because any energy efficiency built into a new school building will save money each and every year of operation for the life of that school building. Small gains in energy efficiency result in large payoffs over the life of operations of a building.

(3) This act provides an incentive for school districts to use certain design and construction processes for constructing high quality school buildings. Using two processes, integrated design and fundamental commissioning, will result in efficient design and construction implementation of higher performance new public school buildings. Using this design and construction process, it is the intent of this act to make energy efficiency a priority for our school districts in the design and construction of new public school buildings.

SECTION 2. That Chapter 3, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-356, Idaho Code, and to read as follows:

33-356. SCHOOL BUILDING DESIGN AND ENERGY EFFICIENCY.

(1) (a) School districts may seek to qualify for a reduction in building replacement value calculation for qualified, newly constructed public school buildings pursuant to section 33-1019(4), Idaho Code.

(b) Each school district that seeks to qualify a newly constructed building for the building replacement value calculation provided for in section 33-1019(4), Idaho Code, shall use integrated design practices and fundamental commissioning in the design and construction of such building.

(c) Following the first year of operations of a building that was certified in accordance with the provisions of subsection (5) (a) of this section, the germane school district shall perform or cause to be performed an annual optimization review of the qualifying building. Such annual optimization review shall be performed in a manner that is consistent with rules promulgated pursuant to this section. Such school district shall thereafter perform or cause to be performed an annual optimization review each year it seeks to qualify such building for the building replacement value calculation provided in section 33-1019(4), Idaho Code.

(2) For purposes of this section, the following terms shall have the following meanings:

(a) "Fundamental commissioning" means the use of a third party to review building design, building system specifications and to specify and monitor preoccupancy system testing to ensure functional integration of specified systems and functional operation of systems at the completion of a project.

(b) "Integrated design" means a process to develop consensus among the project team and owner as to the energy savings and building performance goals of the project and to identify design strategies to achieve those goals, including documentation strategies for design decisions to ensure accurate implementation of design through construction.

(3) It shall be the duty and responsibility of the administrator of the division of building safety to provide assistance to school districts to ensure school districts can access the technical and educational support needed to implement the processes of integrated design and fundamental commissioning. It shall further be the duty and responsibility of the administrator of the division of building safety to compile and cause to be made available to school districts a list of all third party building commissioning agents in Idaho and contiguous states. The administrator shall ensure that all commissioning agents that appear on such list are certified by the building commissioning association or other similar certifying entity. The administrator shall ensure that such list is updated annually.

(4) The administrator of the division of building safety is hereby authorized and directed to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, that provide the guidance, education and technical information necessary for school districts to implement the processes of integrated design and fundamental commissioning. The administrator is authorized to expand upon the terms defined in subsection (2) of this section, and to provide additional definitions as needed. In addition, the administrator shall promulgate rules governing annual optimization review and evaluation of germane building systems to ensure optimal performance of such systems and maximum energy savings and building performance. Such rules shall include, but not be limited to, a definition for the minimum scope of work required for annual optimization.

(5) (a) The administrator of the division of building safety shall certify to the state department of education when a building has qualified for school building replacement value calculation exclusions as provided for in section 33-1019(4), Idaho Code. As part of such certification, the administrator shall state specifically the school building(s) and the square footage thereof that shall be excluded from the school building replacement value calculations.

(b) Following the first year of operations of a building that was certified in accordance with the provisions of subsection (5) (a) of this section, the administrator of the division of building safety shall certify to the state department of education when such building has undergone an annual optimization review as provided in subsection (1) (c) of this section. Such certification shall ensure that the qualifying building meets or exceeds the requirements of annual optimization review rules promulgated pursuant to subsection (4) of this section.

SECTION 3. That Section 33-1019, Idaho Code, be, and the same is hereby amended to read as follows:

33-1019. ALLOCATION FOR SCHOOL BUILDING MAINTENANCE REQUIRED. (1) School districts shall annually allocate moneys for school building maintenance from any source available to the district equal to at least two percent (2%) of the replacement value of school buildings, less the receipt of state funds as provided in this section. Any school district expending more than four percent (4%) of the replacement value of school buildings for school building maintenance in any single fiscal year, beginning with the expenditures of fiscal year 2005, may apply the excess as a credit against the two percent (2%) requirement of this section until such credit is depleted or fifteen (15) years have expired. The state shall annually provide funds to be allocated for school building maintenance as follows:

(a) Divide one (1) by the school district's value index for the fiscal year, as calculated pursuant to section 33-906B, Idaho Code; and

(b) Multiply the result by one-half of one percent (0.5%) of the replacement value of school buildings.

(c) For purposes of the calculation in this subsection (1), public charter schools shall be assigned a value index of one (1).

(2) State funds shall be appropriated through the educational support program/division of facilities, and disbursed from the school district building account. The order of funding sources used to meet the state funding requirements of this section shall be as follows:

(a) State lottery funds distributed pursuant to section 33-905(2), Idaho Code;

(b) If state lottery funds are insufficient to meet the state funding requirements of this section, then other state funds available pursuant to section 33-905(3), Idaho Code, shall be utilized; and

(c) If the funds in paragraphs (a) and (b) of this subsection (2) are insufficient to meet the state funding requirements of this section, then funds available pursuant to section 33-1018B, Idaho Code, shall be utilized.

(3) Moneys allocated for school building maintenance shall be used exclusively for the maintenance and repair of school buildings or any serious or imminent safety hazard on the property of said school buildings as identified pursuant to chapter 80, title 39, Idaho Code, and shall be utilized, first, to abate serious or imminent safety hazards, as identified pursuant to chapter 80, title 39, Idaho Code. Unexpended moneys in a school district's school building maintenance allocation shall be carried over from year to year, and shall remain allocated for the purposes specified in this subsection (3). The replacement value of school buildings shall be determined by multiplying the number of square feet of building floor space

in school buildings by eighty-one dollars and forty-five cents (\$81.45). Notwithstanding the definition in subsection (48) of this section, school buildings that are less than one (1) year old on the first day of school shall not be used in the replacement value calculation. The joint finance-appropriations committee shall annually review the replacement value per square foot when setting appropriations for the educational support program, and may make adjustments to this figure as necessary.

(4) For school buildings first occupied between July 1, 2009, through September 30, 2019, regarding the replacement value calculation that school districts are directed to use to determine the amount of moneys such districts shall allocate for school building maintenance as directed by subsection (1) of this section, a portion of the square footage of school buildings first occupied on or after July 1, 2009, and constructed pursuant to the provisions of section 33-356, Idaho Code, shall not be used in the replacement value calculation, based on the following schedule:

(a) For school buildings at least one (1) year old but less than two (2) years old on the first day of school, exclude one hundred percent (100%) of the square footage;

(b) For school buildings at least two (2) years old but less than three (3) years old on the first day of school, exclude eighty percent (80%) of the square footage;

(c) For school buildings at least three (3) years old but less than four (4) years old on the first day of school, exclude sixty percent (60%) of the square footage;

(d) For school buildings at least four (4) years old but less than five (5) years old on the first day of school, exclude forty percent (40%) of the square footage; and

(e) For school buildings at least five (5) years old but less than six (6) years old on the first day of school, exclude twenty percent (20%) of the square footage.

(5) The amount of relief provided to any school district pursuant to subsection (4) of this section shall not exceed the amount that would be provided if the school district had a value index of one (1).

(6) School districts shall submit the following to the state department of education by not later than December 1:

(a) The number of square feet of school building floor space; and

(b) The funds and fund sources allocated for school building maintenance and any unexpended allocations carried forward from prior fiscal years; and

(c) The projects on which moneys from the school district's school building maintenance allocation were expended, and the amount and categories of expenditures; and

(d) The planned uses of the school district's school building maintenance allocation.

The state department of education shall transmit a summary of such reports to the legislature by not later than January 15 of the following year.

(7) If a school district that is participating in the relief provided for in subsection (4) of this section is forgiven the requirement to allocate the school district portion of the moneys for the two percent (2%) of building replacement value for building maintenance provided in subsection (1) of this section, then once the requirements of subsection (1) of this section are reinstated, the provisions of subsection (4) of this section shall recommence from the time the forgiveness took effect.

(48) For the purposes of this section:

(a) "Annually" means each fiscal year.

(b) "School building" means buildings that are owned by the school district or leased by the school district through a lease-purchase agreement and are regularly occupied by students.

(bc) "School district" means a school district or public charter school.

~~(c) "Annually" means each fiscal year.~~

SECTION 4. STATE DEPARTMENT OF EDUCATION -- REPORT. On or before July 1, 2018, the State Department of Education shall submit a report to the State Board of Education and the chairmen of the following legislative committees: Senate State Affairs; House Environment, Energy and Technology; Senate and House Education; and the Energy, Environment and Technology Interim Committee. Such report shall detail the extent to which public school districts have participated, implemented and benefited from the provisions of this act.

Approved April 14, 2009.

CHAPTER 170
(H.B. No. 250)

AN ACT

RELATING TO FINANCING THE FUNCTIONS OF STATE GOVERNMENT; PROVIDING A SHORT TITLE; DECLARING LEGISLATIVE INTENT REGARDING GENERAL FUND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2009; CREATING THE AMERICAN REINVESTMENT FUND; AMENDING SECTION 1, CHAPTER 391, LAWS OF 2008, TO REVISE THE PUBLIC SCHOOL APPROPRIATION FOR FISCAL YEAR 2009; AMENDING SECTION 2, CHAPTER 391, LAWS OF 2008, TO REVISE THE DISTRIBUTION OF MONEYS TO THE PUBLIC SCHOOL INCOME FUND; TRANSFERRING FUNDS FROM THE CAPITOL ENDOWMENT INCOME FUND TO THE GENERAL FUND; TRANSFERRING FUNDS FROM THE AQUIFER PLANNING AND MANAGEMENT FUND TO THE GENERAL FUND; TRANSFERRING FUNDS FROM THE PERMANENT BUILDING FUND TO THE GENERAL FUND; TRANSFERRING FUNDS FROM THE CONSUMER PROTECTION FUND TO THE GENERAL FUND; REDUCING THE APPROPRIATION TO AGENCIES AND INSTITUTIONS FOR FISCAL YEAR 2009; APPROPRIATING ADDITIONAL MONEYS TO AGENCIES FOR FISCAL YEAR 2009; REDUCING THE APPROPRIATION TO AGENCIES AND INSTITUTIONS FOR EMPLOYER HEALTH INSURANCE COSTS FOR FISCAL YEAR 2009; LIMITING THE TRANSFER OF MONEYS FROM THE GENERAL FUND TO THE LEGISLATIVE FUND; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR FISCAL YEAR 2009; INCREASING THE APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. This act shall be known as the "Idaho Budget Reduction Act of 2009."

SECTION 2. LEGISLATIVE INTENT. The latest General Fund revenue estimates indicate that sufficient revenues will not be available to meet the fiscal year 2009 appropriations authorized by the Legislature. Section 11, Article VII of the Constitution of the State of Idaho provides that: "No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine of this article, to pay such appropriation or expenditure within such fiscal year." Therefore, in order to balance the General Fund expenditures with anticipated revenues in the current fiscal year, the Legislature finds it necessary to create the American Reinvestment Fund, amend the Public School appropriation, make specified transfers of moneys from various fund sources to the General Fund, reduce agency appropriations,

increase appropriations from certain fund sources to partially offset General Fund reductions, and modify the Medical Assistance Services budget for a change in the federal medical assistance match rate.

SECTION 3. There is hereby created in the State Treasury the American Reinvestment Fund. The fund shall be used to account for receipts and disbursements related to the federal American Recovery and Reinvestment Act of 2009. The Treasurer shall invest idle moneys and the fund shall retain its interest. When the Legislature is not in session, approval of expenditures not otherwise appropriated by the Legislature are subject to approval by the Board of Examiners in accordance with Section 67-3516, Idaho Code, for the purposes specified by federal law.

SECTION 4. That Section 1, Chapter 391, Laws of 2008, be, and the same is hereby amended to read as follows:

SECTION 1. The following amount shall be expended from state sources for the Public Schools Division of Operations for the period July 1, 2008, through June 30, 2009:

FROM:

General Fund	\$539,844,200
	<u>\$454,746,600</u>
<u>American Reinvestment Fund</u>	<u>85,097,600</u>
Public School Endowment Earnings Reserve Fund Transfer	29,692,900
Federal Mineral Royalties	1,500,000
Public Education Stabilization Fund	2,262,800
Liquor Control Fund	1,200,000
Miscellaneous Receipts/Balances	2,300,000
Federal Grant Fund	<u>7,232,800</u>
TOTAL	\$584,032,700

SECTION 5. That Section 2, Chapter 391, Laws of 2008, be, and the same is hereby amended to read as follows:

SECTION 2. Notwithstanding the provisions of Sections 33-907, 33-1018, 33-1018A and 33-1018B, Idaho Code, there is hereby appropriated the following amounts to be transferred to the Public School Income Fund for the period July 1, 2008, through June 30, 2009:

FROM:

General Fund	\$539,844,200
	<u>\$454,746,600</u>
<u>American Reinvestment Fund</u>	<u>85,097,600</u>
Public Education Stabilization Fund	<u>2,262,800</u>
TOTAL	\$542,107,000

SECTION 6. Notwithstanding the provisions of Section 67-1611, Idaho Code, there is hereby appropriated, and the State Controller is directed to transfer, the sum of \$5,000,000 from the Capitol Endowment Income Fund to the General Fund as soon as is practicable.

SECTION 7. Notwithstanding the provisions of Section 42-1780, Idaho Code, there is hereby appropriated, and the State Controller is directed to transfer, the sum of \$12,000,000 from the Aquifer Planning and Management Fund to the General Fund as soon as is practicable.

SECTION 8. Notwithstanding the provisions of Section 57-1108, Idaho Code, there is hereby appropriated, and the State Controller is directed to transfer, the sum of \$11,950,200 from the Permanent Building Fund to the General Fund as soon as is practicable.

SECTION 9. Notwithstanding the provisions of Section 48-606, Idaho Code, there is hereby appropriated, and the State Controller is directed to transfer, the sum of \$2,200,000 from the Consumer Protection Fund to the General Fund as soon as is practicable.

SECTION 10. Notwithstanding any other provision of law to the contrary, the appropriations of moneys made in the Laws of 2008, are hereby reduced by the following amounts for the designated state agencies and state institutions from the listed funds for the period July 1, 2008, through June 30, 2009. Agencies and institutions shall administer these reductions by program and by expense class as approved by the Joint Finance-Appropriations Committee:

(1) SECTION 1, CHAPTER 243

BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO
AGRICULTURAL RESEARCH AND COOPERATIVE EXTENSION
SERVICE PROGRAM:

FROM:

General Fund \$1,694,800

(2) SECTION 1, CHAPTER 263

STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO,
BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE,
THE UNIVERSITY OF IDAHO, AND THE OFFICE OF THE STATE BOARD OF EDUCATION:

FROM:

General Fund \$16,770,800

(3) SECTION 1, CHAPTER 291

STATE BOARD OF EDUCATION
COMMUNITY COLLEGE SUPPORT:

FROM:

General Fund \$1,774,900

(4) SECTION 1, CHAPTER 293

STATE BOARD OF EDUCATION
IDAHO SCHOOL FOR THE DEAF AND THE BLIND:

FROM:

General Fund \$511,900

(5) SECTION 1, CHAPTER 264

STATE BOARD OF EDUCATION
OFFICE OF THE STATE BOARD OF EDUCATION:

FROM:

General Fund \$307,600

(6) SECTION 1, CHAPTER 121

STATE BOARD OF EDUCATION

IDAHO STATE HISTORICAL SOCIETY:

FROM:

General Fund

\$179,700

(7) SECTION 1, CHAPTER 122

STATE BOARD OF EDUCATION

IDAHO COMMISSION FOR LIBRARIES:

FROM:

General Fund

\$287,700

(8) SECTION 1, CHAPTER 245

STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION

DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION:

FROM:

General Fund

\$2,236,500

(9) SECTION 1, CHAPTER 195

STATE BOARD OF EDUCATION

EDUCATIONAL PUBLIC BROADCASTING SYSTEM:

FROM:

General Fund

\$275,800

(10) SECTION 1, CHAPTER 247

BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO

AND THE STATE BOARD OF EDUCATION

FOR SPECIAL PROGRAMS:

FROM:

General Fund

\$616,300

(11) SECTION 1, CHAPTER 266

SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION:

FROM:

General Fund

\$348,600

(12) SECTION 1, CHAPTER 289

STATE BOARD OF EDUCATION

DIVISION OF VOCATIONAL REHABILITATION:

FROM:

General Fund

\$520,200

(13) SECTIONS 1 AND 3, CHAPTER 357

DEPARTMENT OF HEALTH AND WELFARE

CHILD WELFARE:

FROM:		
Cooperative Welfare Fund (General)	\$2,378,300	
Cooperative Welfare Fund (Federal)	1,067,700	
TOTAL		\$3,446,000

(14) SECTIONS 1 AND 3, CHAPTER 354

DEPARTMENT OF HEALTH AND WELFARE
SERVICES FOR THE DEVELOPMENTALLY DISABLED:

FROM:		
Cooperative Welfare Fund (General)	\$1,371,900	
Cooperative Welfare Fund (Federal)	1,039,200	
TOTAL		\$2,411,100

(15) SECTION 1, CHAPTER 352

DEPARTMENT OF HEALTH AND WELFARE
INDEPENDENT COUNCILS:

FROM:		
Cooperative Welfare Fund (General)		\$19,100

(16) SECTION 1, CHAPTER 353

DEPARTMENT OF HEALTH AND WELFARE
INDIRECT SUPPORT SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$1,049,600	
Cooperative Welfare Fund (Federal)	798,500	
TOTAL		\$1,848,100

(17) SECTION 1, CHAPTER 268

DEPARTMENT OF HEALTH AND WELFARE
MEDICAL ASSISTANCE SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$20,305,100	
Cooperative Welfare Fund (Federal)	46,677,500	
TOTAL		\$66,982,600

(18) SECTIONS 1, 3 AND 5, CHAPTER 355

DEPARTMENT OF HEALTH AND WELFARE
MENTAL HEALTH SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$2,293,100	
Cooperative Welfare Fund (Federal)	178,900	
TOTAL		\$2,472,000

(19) SECTIONS 2 AND 4, CHAPTER 269

DEPARTMENT OF HEALTH AND WELFARE
PSYCHIATRIC HOSPITALIZATION:

FROM:

Cooperative Welfare Fund (General)	\$831,600	
Cooperative Welfare Fund (Federal)	48,800	
TOTAL		\$880,400

(20) SECTIONS 1, 3 AND 5, CHAPTER 358

DEPARTMENT OF HEALTH AND WELFARE

PUBLIC HEALTH SERVICES:

FROM:

Cooperative Welfare Fund (General)	\$784,400	
Cooperative Welfare Fund (Federal)	79,900	
TOTAL		\$864,300

(21) SECTION 1, CHAPTER 270

DEPARTMENT OF HEALTH AND WELFARE

SERVICE INTEGRATION PROGRAM:

FROM:

Cooperative Welfare Fund (General)	\$53,400	
Cooperative Welfare Fund (Federal)	47,200	
TOTAL		\$100,600

(22) SECTION 1, CHAPTER 324

DEPARTMENT OF HEALTH AND WELFARE

SUBSTANCE ABUSE TREATMENT AND PREVENTION:

FROM:

Cooperative Welfare Fund (General)	\$5,263,000	
Cooperative Welfare Fund (Federal)	8,400	
TOTAL		\$5,271,400

(23) SECTION 1, CHAPTER 326

DEPARTMENT OF HEALTH AND WELFARE

DIVISION OF WELFARE:

FROM:

Cooperative Welfare Fund (General)	\$2,862,200	
Cooperative Welfare Fund (Federal)	4,683,000	
TOTAL		\$7,545,200

(24) SECTION 1, CHAPTER 246

STATE INDEPENDENT LIVING COUNCIL:

FROM:

State Independent Living Council Fund (Gen)		\$7,600
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(25) SECTION 1, CHAPTER 244

PUBLIC HEALTH DISTRICTS:

FROM:

Public Health Trust Fund \$647,700

The State Controller shall transfer \$647,700 from the Public Health Trust Fund to the General Fund for the period July 1, 2008, through June 30, 2009.

(26) SECTION 1, CHAPTER 222

DEPARTMENT OF CORRECTION:

FROM:

General Fund \$6,167,500

(27) SECTION 2, CHAPTER 342

SUPREME COURT:

FROM:

General Fund \$1,903,700

The State Controller shall transfer \$38,900 from the Guardian Ad Litem Fund to the General Fund for the period July 1, 2008, through June 30, 2009.

(28) SECTION 1, CHAPTER 169

DEPARTMENT OF JUVENILE CORRECTIONS:

FROM:

General Fund \$2,392,000

(29) SECTION 1, CHAPTER 235

IDAHO STATE POLICE

DIVISION OF THE IDAHO STATE POLICE:

FROM:

General Fund \$1,834,600

(30) SECTION 1, CHAPTER 284

DEPARTMENT OF ENVIRONMENTAL QUALITY:

FROM:

General Fund \$1,360,700

(31) SECTION 1, CHAPTER 322

DEPARTMENT OF LANDS:

FROM:

General Fund \$318,300

(32) SECTION 1, CHAPTER 277

DEPARTMENT OF PARKS AND RECREATION:

FROM:

General Fund \$2,916,800

(33) SECTION 1, CHAPTER 321

DEPARTMENT OF WATER RESOURCES:

FROM:
General Fund \$809,000

(34) SECTION 1, CHAPTER 265

DEPARTMENT OF AGRICULTURE:

FROM:
General Fund \$2,908,600

(35) SECTION 1, CHAPTER 283

SOIL CONSERVATION COMMISSION:

FROM:
General Fund \$271,900

(36) SECTION 1, CHAPTER 286

DEPARTMENT OF COMMERCE:

FROM:
General Fund \$468,800

(37) SECTION 1, CHAPTER 288

DEPARTMENT OF LABOR:

FROM:
General Fund \$46,400

(38) SECTION 1, CHAPTER 359

DEPARTMENT OF SELF-GOVERNING AGENCIES

COMMISSION ON HISPANIC AFFAIRS:

FROM:
General Fund \$7,200

(39) SECTION 1, CHAPTER 237

OFFICE OF STATE APPELLATE PUBLIC DEFENDER:

FROM:
General Fund \$130,000

(40) SECTION 1, CHAPTER 173

DEPARTMENT OF SELF-GOVERNING AGENCIES

DIVISION OF VETERANS SERVICES:

FROM:
General Fund \$108,100

(41) SECTION 1, CHAPTER 290

DEPARTMENT OF ADMINISTRATION:

FROM:
General Fund \$597,400

(42) SECTION 1, CHAPTER 197

ATTORNEY GENERAL:

FROM:
General Fund \$1,133,200

(43) SECTION 1, CHAPTER 221

STATE CONTROLLER:

FROM:
General Fund \$398,200

(44) SECTION 1, CHAPTER 163

OFFICE OF THE GOVERNOR

COMMISSION ON AGING:

FROM:
General Fund \$328,600

(45) SECTION 1, CHAPTER 262

OFFICE OF THE GOVERNOR

COMMISSION ON THE ARTS:

FROM:
General Fund \$53,500

(46) SECTION 1, CHAPTER 337

OFFICE OF THE GOVERNOR

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED:

FROM:
General Fund \$111,600

(47) SECTION 1, CHAPTER 225

OFFICE OF THE GOVERNOR

OFFICE OF DRUG POLICY:

FROM:
General Fund \$30,400

(48) SECTION 1, CHAPTER 281

OFFICE OF THE GOVERNOR

OFFICE OF ENERGY RESOURCES:

FROM:
General Fund \$42,200

(49) SECTION 1, CHAPTER 229

OFFICE OF THE GOVERNOR

DIVISION OF FINANCIAL MANAGEMENT:

FROM:
General Fund \$131,600

(50) SECTION 1, CHAPTER 230

EXECUTIVE OFFICE OF THE GOVERNOR:

FROM:
General Fund \$131,100

(51) SECTION 1, CHAPTER 282
OFFICE OF THE GOVERNOR
HUMAN RIGHTS COMMISSION:
FROM:
General Fund \$42,100

(52) SECTION 1, CHAPTER 184
OFFICE OF THE GOVERNOR
MILITARY DIVISION:
FROM:
General Fund \$465,300

(53) SECTION 1, CHAPTER 242
OFFICE OF THE GOVERNOR
OFFICE OF SPECIES CONSERVATION:
FROM:
General Fund \$36,900

(54) SECTION 1, CHAPTER 279
LEGISLATIVE COUNCIL
LEGISLATIVE SERVICES OFFICE:
FROM:
General Fund \$313,500

(55) SECTION 1, CHAPTER 279
LEGISLATIVE COUNCIL
OFFICE OF PERFORMANCE EVALUATIONS:
FROM:
General Fund \$151,000

(56) SECTION 1, CHAPTER 344
LIEUTENANT GOVERNOR:
FROM:
General Fund \$9,700

(57) SECTION 1, CHAPTER 271
DEPARTMENT OF REVENUE AND TAXATION
BOARD OF TAX APPEALS:
FROM:
General Fund \$33,900

(58) SECTION 1, CHAPTER 340
DEPARTMENT OF REVENUE AND TAXATION
STATE TAX COMMISSION:

FROM:
General Fund \$1,795,900

(59) SECTION 1, CHAPTER 310

SECRETARY OF STATE:

FROM:
General Fund \$505,600

(60) SECTION 1, CHAPTER 343

STATE TREASURER:

FROM:
General Fund \$102,600

SECTION 11. In addition to any other appropriation provided by law, there is hereby appropriated to the designated state agencies and state institutions the following amounts to be expended from the listed funds for the period July 1, 2008, through June 30, 2009. Agencies and institutions shall administer the additional appropriation contained in this section by program and by expense class as approved by the Joint Finance-Appropriations Committee:

(1) SECTION 1, CHAPTER 293

STATE BOARD OF EDUCATION

IDAHO SCHOOL FOR THE DEAF AND THE BLIND:

FROM:
Miscellaneous Revenue Fund \$55,000
School for the Deaf and Blind Endowment Fund 55,000
Federal Grant Fund 55,000
TOTAL \$165,000

(2) SECTIONS 1 AND 3, CHAPTER 357

DEPARTMENT OF HEALTH AND WELFARE

CHILD WELFARE:

FROM:
Cooperative Welfare Fund (Federal) \$410,200

(3) SECTION 3, CHAPTER 355

DEPARTMENT OF HEALTH AND WELFARE

MENTAL HEALTH SERVICES

COMMUNITY HEALTH SERVICES:

FROM:
Cooperative Welfare Fund (General) \$34,800

(4) SECTIONS 2 AND 4, CHAPTER 269

DEPARTMENT OF HEALTH AND WELFARE

PSYCHIATRIC HOSPITALIZATION:

FROM:
State Hospital North Endowment Income Fund \$40,000
Mental Hospital Endowment Income Fund 35,000
TOTAL \$75,000

(5) SECTION 1, CHAPTER 222

DEPARTMENT OF CORRECTION:

FROM:

Miscellaneous Revenue Fund	\$ 50,800	
Inmate Labor Fund	281,200	
Parolee Supervision Fund	100,000	
Drug and Mental Health Court Supervision Fund	100,000	
TOTAL		\$532,000

(6) SECTION 1, CHAPTER 277

DEPARTMENT OF PARKS AND RECREATION:

FROM:

Parks and Recreation Registration Fund		\$18,800
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(7) SECTION 1, CHAPTER 321

DEPARTMENT OF WATER RESOURCES:

FROM:

Water Resources Adjudication Fund		\$76,000
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SECTION 12. Notwithstanding any other provision of law to the contrary, the appropriations of moneys made in the Laws of 2008 for employer health insurance costs, are hereby reduced by the following amounts for the designated state agencies and state institutions from the listed funds for the period July 1, 2008, through June 30, 2009:

(1) SECTION 1, CHAPTER 243

BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO

AGRICULTURAL RESEARCH AND COOPERATIVE EXTENSION SERVICE:

FROM:

General Fund		\$186,500
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(2) SECTION 1, CHAPTER 263

STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, THE UNIVERSITY OF IDAHO, AND THE OFFICE OF THE STATE BOARD OF EDUCATION:

FROM:

General Fund	\$1,943,600	
Unrestricted Fund	19,600	
TOTAL		\$1,963,200

(3) SECTION 1, CHAPTER 291

STATE BOARD OF EDUCATION

COMMUNITY COLLEGE SUPPORT:

FROM:

General Fund	\$160,900	
Community College Fund	3,700	
TOTAL		\$164,600

(4) SECTION 1, CHAPTER 293

STATE BOARD OF EDUCATION

IDAHO SCHOOL FOR THE DEAF AND THE BLIND:

FROM:

General Fund		\$46,900
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(5) SECTION 1, CHAPTER 264

STATE BOARD OF EDUCATION

OFFICE OF THE STATE BOARD OF EDUCATION:

FROM:

General Fund	\$9,500	
Federal Grant Fund	4,500	
TOTAL		\$14,000

(6) SECTION 1, CHAPTER 292

BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO

AND THE STATE BOARD OF EDUCATION

HEALTH EDUCATION PROGRAMS:

FROM:

General Fund	\$9,500	
Unrestricted Fund	700	
TOTAL		\$10,200

(7) SECTION 1, CHAPTER 121

STATE BOARD OF EDUCATION

IDAHO STATE HISTORICAL SOCIETY:

FROM:

General Fund	\$15,000	
Miscellaneous Revenue Fund	2,700	
Permanent Building Fund	2,000	
Federal Grant Fund	4,900	
TOTAL		\$24,600

(8) SECTION 1, CHAPTER 122

STATE BOARD OF EDUCATION

IDAHO COMMISSION FOR LIBRARIES:

FROM:

General Fund	\$21,200	
Federal Grant Fund	1,600	
TOTAL		\$22,800

(9) SECTION 1, CHAPTER 245

STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION

DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION:

FROM:

General Fund	\$266,200	
Federal Grant Fund	5,800	
Miscellaneous Revenue Fund	1,500	
TOTAL		\$273,500

(10) SECTION 1, CHAPTER 195

STATE BOARD OF EDUCATION

EDUCATIONAL PUBLIC BROADCASTING SYSTEM:

FROM:

General Fund	\$6,900	
Miscellaneous Revenue Fund	9,600	
TOTAL		\$16,500

(11) SECTION 1, CHAPTER 247

BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO

AND THE STATE BOARD OF EDUCATION

FOR SPECIAL PROGRAMS:

FROM:

General Fund		\$17,200
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(12) SECTION 1, CHAPTER 266

SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION:

FROM:

General Fund	\$25,000	
Indirect Cost Recovery Fund	4,300	
Driver's Training Fund	1,200	
Public Instruction Fund	4,600	
Miscellaneous Revenue Fund	2,000	
Federal Grant Fund	25,400	
TOTAL		\$62,500

(13) SECTION 1, CHAPTER 289

STATE BOARD OF EDUCATION

DIVISION OF VOCATIONAL REHABILITATION:

FROM:

General Fund	\$15,100	
Federal Grant Fund	60,500	
TOTAL		\$75,600

(14) SECTIONS 1 AND 3, CHAPTER 357

DEPARTMENT OF HEALTH AND WELFARE

CHILD WELFARE:

FROM:

Cooperative Welfare Fund (General)	\$ 93,200	
Cooperative Welfare Fund (Dedicated)	700	
Cooperative Welfare Fund (Federal)	105,100	
TOTAL		\$199,000

(15) SECTIONS 1 AND 3, CHAPTER 354

DEPARTMENT OF HEALTH AND WELFARE

SERVICES FOR THE DEVELOPMENTALLY DISABLED:

FROM:		
Cooperative Welfare Fund (General)	\$ 84,700	
Cooperative Welfare Fund (Dedicated)	13,000	
Cooperative Welfare Fund (Federal)	174,100	
TOTAL		\$271,800

(16) SECTION 1, CHAPTER 352

DEPARTMENT OF HEALTH AND WELFARE
INDEPENDENT COUNCILS:

FROM:		
Cooperative Welfare Fund (General)	\$1,800	
Cooperative Welfare Fund (Federal)	2,900	
Domestic Violence Project Fund	1,300	
TOTAL		\$6,000

(17) SECTION 1, CHAPTER 353

DEPARTMENT OF HEALTH AND WELFARE
INDIRECT SUPPORT SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$76,500	
Cooperative Welfare Fund (Dedicated)	82,000	
Cooperative Welfare Fund (Federal)	3,200	
TOTAL		\$161,700

(18) SECTION 1, CHAPTER 268

DEPARTMENT OF HEALTH AND WELFARE
MEDICAL ASSISTANCE SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$53,200	
Cooperative Welfare Fund (Federal)	91,800	
TOTAL		\$145,000

(19) SECTIONS 3 AND 5, CHAPTER 355

DEPARTMENT OF HEALTH AND WELFARE
MENTAL HEALTH SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$114,200	
Cooperative Welfare Fund (Federal)	46,500	
Cooperative Welfare Fund (Dedicated)	5,600	
Drug Court, Mental Health and Family Court Services Fund	1,200	
TOTAL		\$167,500

(20) SECTIONS 2 AND 4, CHAPTER 269

DEPARTMENT OF HEALTH AND WELFARE
PSYCHIATRIC HOSPITALIZATION:

FROM:		
Cooperative Welfare Fund (General)	\$130,600	
Cooperative Welfare Fund (Dedicated)	20,600	
State Hospital North Endowment Income Fund	1,800	
Mental Hospital Endowment Income Fund	8,600	
Cooperative Welfare Fund (Federal)	22,700	
TOTAL		\$184,300

(21) SECTIONS 1, 3 AND 5, CHAPTER 358

DEPARTMENT OF HEALTH AND WELFARE

PUBLIC HEALTH SERVICES:

FROM:		
Cooperative Welfare Fund (General)	\$23,800	
Cancer Control Fund	400	
Cooperative Welfare Fund (Dedicated)	17,300	
Cooperative Welfare Fund (Federal)	50,800	
Emergency Medical Services Fund	10,600	
TOTAL		\$102,900

(22) SECTION 1, CHAPTER 270

DEPARTMENT OF HEALTH AND WELFARE

SERVICE INTEGRATION PROGRAM:

FROM:		
Cooperative Welfare Fund (General)	\$7,100	
Cooperative Welfare Fund (Federal)	6,400	
TOTAL		\$13,500

(23) SECTION 1, CHAPTER 324

DEPARTMENT OF HEALTH AND WELFARE

SUBSTANCE ABUSE TREATMENT AND PREVENTION:

FROM:		
Cooperative Welfare Fund (General)	\$4,000	
Cooperative Welfare Fund (Dedicated)	400	
Cooperative Welfare Fund (Federal)	3,400	
TOTAL		\$7,800

(24) SECTION 1, CHAPTER 326

DEPARTMENT OF HEALTH AND WELFARE

DIVISION OF WELFARE:

FROM:		
Cooperative Welfare Fund (General)	\$130,400	
Idaho Health Insurance Access Card Fund	300	
Cooperative Welfare Fund (Federal)	178,200	
TOTAL		\$308,900

(25) SECTION 1, CHAPTER 246

STATE INDEPENDENT LIVING COUNCIL:

FROM:		
State Independent Living Council Fund (Gen)	\$600	
State Independent Living Council Fund (Ded)	800	
State Independent Living Council Fund (Fed)	900	
TOTAL		\$2,300

(26) SECTION 1, CHAPTER 244

PUBLIC HEALTH DISTRICTS:

FROM:		
Public Health Trust Fund		\$78,200

(27) SECTION 1, CHAPTER 222

DEPARTMENT OF CORRECTION:

FROM:		
General Fund	\$733,700	
Inmate Labor Fund	22,800	
Parolee Supervision Fund	39,400	
Drug and Mental Health Court Supervision Fund	2,000	
Miscellaneous Revenue Fund	8,300	
Federal Grant Fund	5,600	
TOTAL		\$811,800

(28) SECTION 2, CHAPTER 342

SUPREME COURT:

FROM:		
General Fund	\$130,000	
Federal Grant Fund	2,500	
ISTARS Technology Fund	500	
Drug Court, Mental Health and Family Court Services Fund	1,500	
TOTAL		\$134,500

(29) SECTION 1, CHAPTER 169

DEPARTMENT OF JUVENILE CORRECTIONS:

FROM:		
General Fund	\$199,300	
Miscellaneous Revenue Fund	800	
Juvenile Corrections Fund	800	
Federal Grant Fund	2,300	
TOTAL		\$203,200

(30) SECTION 1, CHAPTER 235

IDAHO STATE POLICE:

FROM:		
General Fund	\$ 97,900	
State Brand Board Fund	18,900	
Idaho Law Enforcement Fund	111,100	

Miscellaneous Revenue Fund	9,400	
Drug Donation Fund	600	
Hazardous Materials/Waste Enforcement Fund	900	
Federal Grant Fund	16,600	
Idaho Law Enforcement Telecommunications Fund	3,100	
Peace Officers Fund	12,500	
Idaho State Racing Commission Fund	2,000	
TOTAL		\$273,000

(31) SECTION 1, CHAPTER 284

DEPARTMENT OF ENVIRONMENTAL QUALITY:

FROM:

General Fund	\$85,600	
Air Quality Permitting Fund	10,100	
Public Water System Supervision Fund	8,800	
Water Pollution Control Fund	1,900	
Department of Environmental Quality Fund (Federal)	76,700	
Department of Environmental Quality Fund (Receipts)	6,200	
Environmental Remediation Fund (Box)	200	
Environmental Remediation Fund (Basin)	900	
TOTAL		\$190,400

(32) SECTION 1, CHAPTER 272

DEPARTMENT OF FISH AND GAME:

FROM:

Fish and Game Fund (Licenses)	\$134,000	
Fish and Game Fund (Federal)	109,800	
Fish and Game Fund (Other)	12,000	
Fish and Game Set-aside Fund (Licenses)	1,300	
Fish and Game Set-aside Fund (Other)	4,500	
Fish and Game Expendable Trust Fund	2,600	
Fish and Game Nonexpendable Trust Fund	100	
TOTAL		\$264,300

(33) SECTION 1, CHAPTER 339

STATE BOARD OF LAND COMMISSIONERS

ENDOWMENT FUND INVESTMENT BOARD:

FROM:

Miscellaneous Revenue Fund	\$ 500	
Endowment Administrative Fund	1,500	
TOTAL		\$2,000

(34) SECTION 1, CHAPTER 322

DEPARTMENT OF LANDS:

FROM:

General Fund	\$18,600	
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Department of Lands Fund	15,800	
Endowment Administrative Fund	71,400	
Indirect Cost Recovery Fund	600	
Federal Grant Fund	7,600	
Fire Suppression Deficiency Fund	900	
TOTAL		\$114,900

(35) SECTION 1, CHAPTER 277

DEPARTMENT OF PARKS AND RECREATION:

FROM:

General Fund	\$42,900	
Indirect Cost Recovery Fund	2,000	
Parks and Recreation Fund	16,500	
Recreational Fuels Fund	4,900	
Parks and Recreation Registration Fund	4,800	
Public Recreation Enterprise Fund	1,300	
Parks and Recreation Expendable Trust Fund	2,500	
Federal Grant Fund	6,200	
TOTAL		\$81,100

(36) SECTION 1, CHAPTER 241

LAVA HOT SPRINGS FOUNDATION:

FROM:

Lava Hot Springs Foundation Fund		\$5,500
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(37) SECTION 1, CHAPTER 321

DEPARTMENT OF WATER RESOURCES:

FROM:

General Fund	\$100,500	
Indirect Cost Recovery Fund	3,400	
Water Administration Fund	4,500	
Aquifer Planning and Management Fund	1,500	
Miscellaneous Revenue Fund	4,800	
Federal Grant Fund	4,600	
TOTAL		\$119,300

(38) SECTION 1, CHAPTER 265

DEPARTMENT OF AGRICULTURE:

FROM:

General Fund	\$29,800	
Administration and Accounting Services Fund	4,600	
Facilities Maintenance Fund	700	
Agricultural Inspection Fund	7,000	
Agricultural Fees - Livestock Disease Control Fund	3,800	
Agricultural Fees - Dairy Inspection Fund	6,600	
Agricultural Fees - Egg Inspection Fund	1,100	
Agricultural Fees - Pesticides Fund	9,900	

Agricultural Fees - Commercial Feed and Fertilizer Fund	4,600	
Quality Assurance Laboratory Services Fund	3,000	
Federal Grant Fund	13,400	
Agricultural Fees - Organic Food Products Fund	200	
Agricultural Fees - Fresh Fruit and Vegetable Inspection Fund	19,000	
Rural Economic Development Integrated Freight Trans. Fund	100	
Agricultural Loans Fund	100	
Agricultural Fees - Sheep Industry Regulation Fund	500	
TOTAL		\$104,400

(39) SECTION 1, CHAPTER 283

SOIL CONSERVATION COMMISSION:

FROM:

General Fund	\$10,600	
Federal Grant Fund	1,400	
TOTAL		\$12,000

(40) SECTION 1, CHAPTER 286

DEPARTMENT OF COMMERCE:

FROM:

General Fund	\$18,300	
Tourism and Promotion Fund	5,200	
Miscellaneous Revenue Fund	500	
Federal Grant Fund	4,000	
TOTAL		\$28,000

(41) SECTION 1, CHAPTER 120

DEPARTMENT OF FINANCE:

FROM:

State Regulatory Fund		\$26,000
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(42) SECTION 1, CHAPTER 287

INDUSTRIAL COMMISSION:

FROM:

Industrial Administration Fund	\$63,800	
Peace Officer and Detention Officer Temporary Disability Fund	200	
Crime Victims Compensation Fund	6,800	
TOTAL		\$70,800

(43) SECTION 1, CHAPTER 223

DEPARTMENT OF INSURANCE:

FROM:

Self-Governing Operating Fund	\$32,000	
Self-Governing State Fire Marshal Fund	5,000	
TOTAL		\$37,000

(44) SECTION 1, CHAPTER 288

DEPARTMENT OF LABOR:

FROM:

General Fund	\$3,800	
Miscellaneous Revenue Fund	2,000	
TOTAL		\$5,800

(44) SECTION 1, CHAPTER 162

PUBLIC UTILITIES COMMISSION:

FROM:

Public Utilities Commission Fund	\$24,200	
Federal Grant Fund	300	
TOTAL		\$24,500

(45) SECTION 1, CHAPTER 280

SELF-GOVERNING AGENCIES

DIVISION OF BUILDING SAFETY:

FROM:

State Regulatory Fund	\$70,500	
Miscellaneous Revenue/Industrial Safety Fund	2,700	
Miscellaneous Revenue/Logging Fund	2,400	
Miscellaneous Revenue/Energy Program Fund	200	
Federal Grant Fund	300	
TOTAL		\$76,100

(46) SECTION 1, CHAPTER 359

SELF-GOVERNING AGENCIES

COMMISSION ON HISPANIC AFFAIRS:

FROM:

General Fund	\$1,000	
Federal Grant Fund	500	
TOTAL		\$1,500

(47) SECTION 1, CHAPTER 174

SELF-GOVERNING AGENCIES

STATE LOTTERY:

FROM:

State Lottery Fund		\$23,500
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(48) SECTION 2, CHAPTER 359

SELF-GOVERNING AGENCIES

MEDICAL BOARDS:

FROM:

State Regulatory Fund		\$19,600
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(49) SECTION 3, CHAPTER 359

SELF-GOVERNING AGENCIES

REGULATORY BOARDS:

FROM:

State Regulatory Fund		\$31,000
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(50) SECTION 1, CHAPTER 237

OFFICE OF STATE APPELLATE PUBLIC DEFENDER:

FROM:

General Fund		\$10,500
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(51) SECTION 1, CHAPTER 173

SELF-GOVERNING AGENCIES

DIVISION OF VETERANS SERVICES:

FROM:

General Fund	\$14,400	
Miscellaneous Revenue Fund	93,900	
Federal Grant Fund	45,400	
TOTAL		\$153,700

(52) SECTION 1, CHAPTER 360

IDAHO TRANSPORTATION DEPARTMENT:

FROM:

State Highway Fund (Dedicated)	\$818,000	
State Highway Fund (Billing)	200	
State Highway Fund (Federal)	90,500	
State Highway Fund (Local)	1,600	
State Aeronautics Fund (Dedicated)	5,800	
State Aeronautics Fund (Billing)	500	
State Aeronautics Fund (Federal)	200	
TOTAL		\$916,800

(53) SECTION 1, CHAPTER 290

DEPARTMENT OF ADMINISTRATION:

FROM:

General Fund	\$16,600	
Indirect Cost Recovery Fund	7,000	
Administration and Accounting Services Fund	26,900	
Industrial Special Indemnity Fund	1,400	
Administrative Code Fund	1,900	
Permanent Building Fund	14,900	
Federal Surplus Property Revolving Fund	2,100	
Employee Group Insurance Fund	2,400	
Retained Risk Fund	3,900	
TOTAL		\$77,100

(54) SECTION 1, CHAPTER 273

DEPARTMENT OF ADMINISTRATION

CAPITOL COMMISSION:

FROM:

Permanent Building Fund		\$1,000
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(55) SECTION 1, CHAPTER 197

ATTORNEY GENERAL:

FROM:

General Fund	\$101,600	
Consumer Protection Fund	1,000	
TOTAL		\$102,600

(56) SECTION 1, CHAPTER 221

STATE CONTROLLER:

FROM:

General Fund	\$22,700	
Data Processing Services Fund	26,200	
TOTAL		\$48,900

(57) SECTION 1, CHAPTER 163

OFFICE OF THE GOVERNOR

COMMISSION ON AGING:

FROM:

General Fund	\$4,100	
Miscellaneous Revenue Fund	300	
Federal Grant Fund	3,300	
TOTAL		\$7,700

(58) SECTION 1, CHAPTER 262

OFFICE OF THE GOVERNOR

COMMISSION ON THE ARTS:

FROM:

General Fund	\$2,800	
Federal Grant Fund	2,800	
TOTAL		\$5,600

(59) SECTION 1, CHAPTER 337

OFFICE OF THE GOVERNOR

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED:

FROM:

General Fund	\$ 5,100	
Federal Grant Fund	15,600	
TOTAL		\$20,700

(60) SECTION 1, CHAPTER 225

OFFICE OF THE GOVERNOR

OFFICE OF DRUG POLICY:

FROM:
General Fund \$1,500

(61) SECTION 1, CHAPTER 281 AND SECTION 1, CHAPTER 394

OFFICE OF THE GOVERNOR

OFFICE OF ENERGY RESOURCES:

FROM:

General Fund	\$ 300	
Indirect Cost Recovery Fund	700	
Renewable Energy Resources Fund	300	
Miscellaneous Revenue Fund	1,100	
Petroleum Price Violation Fund	5,100	
Federal Grant Fund	1,500	
TOTAL		\$9,000

(62) SECTION 1, CHAPTER 229

OFFICE OF THE GOVERNOR

DIVISION OF FINANCIAL MANAGEMENT:

FROM:

General Fund	\$9,300	
Miscellaneous Revenue Fund	200	
TOTAL		\$9,500

(63) SECTION 1, CHAPTER 230

EXECUTIVE OFFICE OF THE GOVERNOR:

FROM:

General Fund	\$13,000	
Federal Grant Fund	1,500	
TOTAL		\$14,500

(64) SECTION 1, CHAPTER 341

OFFICE OF THE GOVERNOR

DIVISION OF HUMAN RESOURCES:

FROM:

Division of Human Resources Fund		\$9,000
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(65) SECTION 1, CHAPTER 282

OFFICE OF THE GOVERNOR

HUMAN RIGHTS COMMISSION:

FROM:

General Fund	\$4,500	
Federal Grant Fund	1,000	
TOTAL		\$5,500

(66) SECTION 1, CHAPTER 309

OFFICE OF THE GOVERNOR

STATE LIQUOR DISPENSARY:

FROM:

Liquor Control Fund		\$98,500
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(67) SECTION 1, CHAPTER 184

OFFICE OF THE GOVERNOR

MILITARY DIVISION:

FROM:

General Fund	\$25,800	
Indirect Cost Recovery Fund	500	
Federal Grant Fund	81,200	
Administration and Accounting Services Fund	11,000	
TOTAL		\$118,500

(68) SECTION 1, CHAPTER 228

OFFICE OF THE GOVERNOR

PUBLIC EMPLOYEE RETIREMENT SYSTEM:

FROM:

PERSI Administrative Fund	\$30,000	
PERSI Special Fund	2,500	
TOTAL		\$32,500

(69) SECTION 1, CHAPTER 242

OFFICE OF THE GOVERNOR

OFFICE OF SPECIES CONSERVATION:

FROM:

General Fund	\$2,500	
Federal Grant Fund	500	
TOTAL		\$3,000

(70) SECTION 1, CHAPTER 279

LEGISLATIVE COUNCIL

LEGISLATIVE SERVICES OFFICE:

FROM:

General Fund	\$25,800	
Permanent Building Fund	200	
Professional Services Fund	7,500	
TOTAL		\$33,500

(71) SECTION 1, CHAPTER 279

LEGISLATIVE COUNCIL

OFFICE OF PERFORMANCE EVALUATIONS:

FROM:

General Fund		\$4,500
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(72) SECTION 1, CHAPTER 344

LIEUTENANT GOVERNOR:

FROM:

General Fund		\$1,500
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(73) SECTION 1, CHAPTER 271

DEPARTMENT OF REVENUE AND TAXATION

BOARD OF TAX APPEALS:

FROM:

General Fund	\$3,000
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(74) SECTION 1, CHAPTER 340

DEPARTMENT OF REVENUE AND TAXATION

STATE TAX COMMISSION:

FROM:

General Fund	\$168,100	
Administration and Accounting Fund	1,200	
Administration Services for Transportation Fund	22,000	
Multistate Tax Compact Fund	10,800	
Abandoned Property Trust - Unclaimed Property Fund	4,700	
TOTAL		\$206,800

(75) SECTION 1, CHAPTER 310

SECRETARY OF STATE:

FROM:

General Fund	\$15,500
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(76) SECTION 1, CHAPTER 343

STATE TREASURER:

FROM:

General Fund	\$6,600	
State Treasurer LGIP Fund	1,200	
Treasurer's Office - Professional Services Fund	1,200	
TOTAL		\$9,000

SECTION 13. On or before June 1, 2009, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall direct the State Controller to reduce by \$405,400 the amount transferred from the General Fund to the Legislative Fund pursuant to Section 67-451(2), Idaho Code, for the period July 1, 2008, through June 30, 2009.

SECTION 14. Notwithstanding any other provision of law to the contrary, the appropriation made in Section 1, Chapter 268, Laws of 2008, is hereby reduced by the following amounts for the designated division from the listed funds for the period July 1, 2008, through June 30, 2009. The Department shall administer these reductions by program and expense class as approved by the Joint Finance-Appropriations Committee:

DEPARTMENT OF HEALTH AND WELFARE

MEDICAL ASSISTANCE SERVICES:

FROM:

Cooperative Welfare Fund (General)	\$52,332,100	
Hospital Assessment Fund	7,387,200	
Cooperative Welfare Fund (Dedicated)	13,654,700	
TOTAL		\$73,374,000

SECTION 15. Notwithstanding any other provision of law to the contrary, the appropriation made in Section 1, Chapter 268, Laws of 2008, is hereby increased by the following amount for the designated division from the listed fund for the period July 1, 2008, through June 30, 2009. The Department shall administer these increases by program and expense class as approved by the Joint Finance-Appropriations Committee:

DEPARTMENT OF HEALTH AND WELFARE

MEDICAL ASSISTANCE SERVICES:

FROM:

Cooperative Welfare Fund (Federal) \$137,731,100

SECTION 16. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 14, 2009.

CHAPTER 171
(H.B. No. 252)

AN ACT

RELATING TO SCHOOL DISTRICT FINANCIAL EMERGENCIES; AMENDING SECTION 33-402, IDAHO CODE, TO PROVIDE FOR NOTICE REQUIREMENTS IN THE EVENT A FINANCIAL EMERGENCY HAS BEEN DECLARED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-515, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE ISSUANCE OF CERTAIN CONTRACTS, TO CLARIFY LANGUAGE, TO PROVIDE FOR AN INFORMAL REVIEW UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR A DUE PROCESS HEARING AND PROCEDURE UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THE TIME IN WHICH THE DUE PROCESS HEARING IS TO BE HELD AND TO PROVIDE THAT A DUE PROCESS HEARING IS NOT REQUIRED UNDER CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 5, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-522, IDAHO CODE, TO PROVIDE FOR FINANCIAL EMERGENCIES; AMENDING SECTION 33-601, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-801, IDAHO CODE, TO PROVIDE A TIME REQUIREMENT FOR PREPARATION OF A BUDGET IF A FINANCIAL EMERGENCY HAS BEEN DECLARED; AMENDING SECTION 33-1510, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-402, Idaho Code, be, and the same is hereby amended to read as follows:

33-402. NOTICE REQUIREMENTS. ~~a.~~(1) Notice of all school elections must be given by posting and publishing notice of said elections and such notice shall state:

- ~~1.~~(a) The date of holding the election;
- ~~2.~~(b) The hours ~~between which~~ the polls will be open;
- ~~3.~~(c) The definite place or places of holding the election;
- ~~4.~~(d) In the case of election of trustees, the offices to be filled, the trustee zones, and a statement that declarations of candidacy must be filed not later than 5:00 p.m. on the fifth Friday prior to the day of the election;
- ~~5.~~(e) In the case of bond election, the amount of the issue, the purpose and period of the issue;

~~6~~-(f) In the case of the assumption of a debt, the amount of any such debt to be assumed by each district, or part of a district; and

~~7~~-(g) In all other elections, a brief statement of the question being submitted to the electors.

~~b~~-(2) In school elections involving:

(~~ia~~) ~~t~~The incurring or increasing of a debt~~;~~

(~~iib~~) ~~a~~Approving a levy for a plant facilities reserve fund and term thereof~~;~~

(~~iiic~~) ~~e~~Excising and annexing territory~~;~~

(~~iivd~~) ~~e~~Consolidating districts~~;~~ or

(~~ve~~) ~~d~~Dividing a district~~;~~

~~n~~Notice of the election shall be posted not less than twenty-one (21) days prior to the day of the election in at least three (3) places in each district participating in or affected by such election, one (1) of which places shall be at or near the main door of the administrative offices of each such district, and by publishing at least once each week for three (3) consecutive weeks prior to the day of the election in a newspaper as provided in section 60-106, Idaho Code, published in the county or in any county in which such district may lie and having general circulation within such district.

~~e~~-(3) Notice of all other school elections shall be given in the same manner, except that the posting shall be for not less than ten (10) days, and publishing shall be at least once each week for two (2) consecutive weeks prior to the day of the election.

~~d~~-(4) Notice of the deadline for filing declaration of candidacy for election of trustees shall be posted for not less than ten (10) days and published at least once each week for two (2) consecutive weeks prior to the last day for filing nominating petitions as required by section 33-502, Idaho Code.

~~e~~-(5) In elections for excising and annexing the territory of school districts, or to create new school districts by consolidation or division, the clerk of the board of county commissioners of the county in which the district lies, or of the home county if the district be a joint district, shall prepare, post, sign and arrange for the publishing of, the notice of election. In all other elections it shall be the duty of the clerk of the board of trustees so to do.

~~f~~-(6) Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho Code, and annual budget hearing as provided for in section 33-801, Idaho Code, shall be given by posting and publishing as outlined in subsection ~~b~~-(2) of this section except that posting shall be for not less than ten (10) days, and publishing shall be once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district. If a financial emergency has been declared pursuant to section 33-522, Idaho Code, the notice of annual meeting and the notice of the annual budget hearing shall be posted pursuant to subsection (2) of this section, for not less than five (5) days, and by such further notice as shall provide reasonable notice to the patrons of the school district if publication in a newspaper is not feasible.

~~g~~-(7) Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in section 33-601, Idaho Code, and contracting for transportation services as provided for in section 33-1510, Idaho Code, shall be given in a newspaper of general circulation as required

by chapter 1, title 60, Idaho Code, except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

~~h.~~ (8) Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with his board by the clerk responsible for the posting and the publishing of said notice, before the day of the election named in the notice.

SECTION 2. That Section 33-515, Idaho Code, be, and the same is hereby amended to read as follows:

33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection (16) of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district subject to the provisions included in this chapter.

(2) After the third full year of employment and at least once annually, the performance of each such certificated employee, school nurse, or school librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Except as otherwise provided, that person shall have the right to automatic renewal of contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the first day of June preceding the expiration of the term of the current contract. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a renewable contract of the requirement that such person must give the notice hereinabove and that failure to do so may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the fifteenth day of May, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by this section.

(3) Any contract automatically renewed under the provisions of this section shall be for the same length as the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance, except where a board of trustees has declared a financial emergency pursuant to section 33-522, Idaho Code.

(4) Nothing herein in this section shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

(5) Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose

contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

(6) If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

(7) If the board of trustees takes action after the declaration of a financial emergency pursuant to section 33-522, Idaho Code, and such action is directed at more than one (1) certificated employee and, if mutually agreed to by both parties, a single informal review shall be conducted. Without mutual consent of both parties, the board of trustees shall use the following procedure to conduct a single due process hearing within sixty-seven (67) days of the declaration of financial emergency pursuant to section 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the change in the length of the term stated in the current contract or reduce the salary of any certificated employee by filing with the board of trustees written notice specifying the purported reasons for such changes.

(b) Upon receipt of such notice, the board of trustees, acting through its duly authorized administrative official, shall give the affected employees written notice of the reductions and the recommendation of the change in the length of the term stated in the current contract or the reduction of salary, along with written notice of a hearing before the board of trustees prior to any determination by the board of trustees.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than fourteen (14) days after receipt of the notice by the employees. The date provided for the hearing may be changed by mutual consent.

(d) The hearing shall be open to the public.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board of trustees, may administer oaths to witnesses or affirmations by witnesses.

(f) The employees may be represented by legal counsel and/or by a representative of a local or state education association.

(g) The chairman of the board of trustees or the designee of the chairman shall conduct the hearing.

(h) The board of trustees shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of

the hearing shall be provided at cost by the board of trustees upon request of the employee.

(i) At the hearing the superintendent or other duly authorized administrative officer shall present evidence to substantiate the reduction contained in such notice.

(j) The employees may produce evidence to refute the reduction. Any witness presented by the superintendent or by the employees shall be subject to cross-examination. The board of trustees may also examine witnesses and be represented by counsel.

(k) The affected employees may file written briefs and arguments with the board of trustees within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employees and the board of trustees.

(l) Within seven (7) days following the close of the hearing, the board of trustees shall determine and, acting through its duly authorized administrative official, shall notify the employees in writing whether the evidence presented at the hearing established the need for the action taken.

The due process hearing pursuant to this subsection (7) shall not be required if the board of trustees and the local education association reach an agreement on issues agreed upon pursuant to section 33-522 (3) , Idaho Code.

(8) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period.

SECTION 3. That Chapter 5, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 33-522, Idaho Code, and to read as follows:

33-522. FINANCIAL EMERGENCY. (1) Prior to declaring a financial emergency, the board of trustees shall hold a public meeting for the purpose of receiving input concerning possible solutions to the financial problems facing the school district.

(2) If the state department of education certifies that one (1) or more of the conditions in paragraph (a), (b) or (c) of this subsection are met, then the board of trustees may declare a financial emergency if it determines that the condition in paragraph (f) of this subsection is also met. Alternatively, the board of trustees may declare a financial emergency if it determines that either of the conditions in paragraph (d) or (e) of this subsection are met and the state department of education certifies that the condition set forth in paragraph (f) of this subsection is also met.

(a) Any of the base salary multipliers in section 33-1004E, Idaho Code, are reduced by one and one-half percent (1 1/2%) or more from any prior fiscal year.

(b) The minimum instructional salary provision in section 33-1004E, Idaho Code, is reduced by one and one-half percent (1 1/2%) or more from any prior fiscal year.

(c) The amount of total general fund money appropriated per support unit is reduced by greater than three percent (3%) from the original general fund appropriation per support unit of any prior fiscal year.

(d) The amount of property tax revenue to be collected by the school district that may be used for any general fund purpose, with the exception of any emergency levy funds, is reduced from the prior fiscal year, and the amount of said reduction represents more than five percent (5%) of the school district's general fund budget for combined state and local revenues from the prior fiscal year.

(e) The school district's general fund has decreased by at least three percent (3%) from the previous year's level due to a decrease in funding or natural disaster, but not as a result of a drop in the number of support units or the index multiplier calculated pursuant to section 33-1004A, Idaho Code, or a change in the emergency levy.

(f) The school district's unrestricted general fund balance, which excludes funds restricted by state or federal law and considering both anticipated expenditures and revenue, is less than five and one-half percent (5 1/2%) of the school district's unrestricted general fund budget at the time the financial emergency is declared or for the fiscal year for which the financial emergency is declared.

(3) Upon its declaration of a financial emergency, the board of trustees shall:

(a) Have the power to reopen the salary and benefits compensation aspects of the negotiated agreement, including the length of the certificated employee contracts and the amount of compensation and benefits; and

(b) If the parties to the negotiated agreement mutually agree, reopen other matters contained within the negotiated agreement directly affecting the financial circumstances in the school district.

If the board of trustees exercises the power provided in this subsection consistent with the requirements of subsection (2) of this section, both the board of trustees and the local education association shall meet and confer in good faith for the purpose of reaching an agreement on such issues.

(4) If, after the declaration of a financial emergency pursuant to subsection (2) of this section, both parties have met and conferred in good faith and an agreement has not been reached, the board of trustees may impose its last, best offer, following the outcome of the due process hearing held pursuant to section 33-515(7), Idaho Code.

(5) A financial emergency declared pursuant to subsection (2) of this section shall be effective for only one (1) fiscal year at a time and shall not be declared by the board of trustees for a second consecutive year, unless so qualified by additional reductions pursuant to the conditions listed in subsection (2) of this section.

(6) The time requirements of sections 33-514(2) and 33-515(2), Idaho Code, shall not apply in the event a financial emergency is declared pursuant to subsection (2) of this section.

SECTION 4. That Section 33-601, Idaho Code, be, and the same is hereby amended to read as follows:

33-601. REAL AND PERSONAL PROPERTY -- ACQUISITION, USE OR DISPOSAL OF SAME. The board of trustees of each school district shall have the following powers and duties:

(1) To rent to or from others, school buildings or other property used, or to be used, for school purposes.

(2) To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, such contract shall be executed in accordance with the provisions of chapter 28, title 67, Idaho Code.

(3) To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real property. The board of trustees shall de-

termine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

(4) (a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection (6) of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections ~~§~~ (7) and ~~h~~ (8) of section 33-402, Idaho Code, except that when the appraised value of the property is less than one thousand dollars (\$1,000), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

The board of trustees may sell personal property, with an estimated value of less than one thousand dollars (\$1,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the property has an estimated value of less than five hundred dollars (\$500), the property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board, provided however, such employee shall notify the board prior to disposal of said property.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal

property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, the Idaho housing and finance association, any public charter school, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph (4) (b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real or personal property.

(5) To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

(6) To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

(7) To authorize the use of any school building of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

(8) To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

(9) If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

SECTION 5. That Section 33-801, Idaho Code, be, and the same is hereby amended to read as follows:

33-801. SCHOOL DISTRICT BUDGET. No later than twenty-eight (28) days or, if a financial emergency has been declared pursuant to section 33-522, Idaho Code, fourteen (14) days prior to its annual meeting, the board of trustees of each school district shall have prepared a budget, in form prescribed by the state superintendent of public instruction, and shall have called and caused to be held a public hearing thereon, and at such public hearing, or at a special meeting held no later than fourteen (14) days after the public hearing, shall adopt a budget for the ensuing year. Notice of the hearing shall be posted, and published as prescribed in section 33-402, Idaho Code, and a record of the hearing shall be kept by the clerk of the board of trustees. At the time said notice is given and until the date of the hearing, a copy of the budget shall be available for public inspection at all reasonable times at the administrative offices of the school district, or at the office of the clerk of the district. The board of trustees of each school district shall also prepare and publish, as a part of such notice, a summary statement of the budget for the current and ensuing years. Such statement

shall be prepared in a manner consistent with standard accounting practices and in such form as the state superintendent of public instruction shall prescribe, and, among other things, said statement shall show amounts budgeted for all major classifications of income and expenditures, with total amounts budgeted for salary and wage expenditures in each such classification shown separately. Such statement shall show amounts actually expended for the two (2) previous years for the same classification for purposes of comparison. The budgeted dollar amounts of revenue in those categories included within the provisions of section 33-802, Idaho Code, as approved within the adopted budget shall be the same as presented to the respective county commissioners for tax levy purposes.

SECTION 6. That Section 33-1510, Idaho Code, be, and the same is hereby amended to read as follows:

33-1510. CONTRACTS FOR TRANSPORTATION SERVICE. (1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications; provided that, one (1) time only, a school district may renew a contract with the current contractor if the board of trustees, after renegotiation with the contractor, determines that the terms are satisfactory to the district. The board of trustees may renew the contract for a term not to exceed five (5) years. Renewal of any contract pursuant to this section shall not be granted unless the provisions of this section were included, in a substantially conforming summary, within the bidding notice, published pursuant to section 33-601, Idaho Code, of the contract.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in section 33-402~~g~~(7), Idaho Code, and shall award the contract to the lowest responsible bidder.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 15, 2009.

CHAPTER 172
(H.B. No. 170)

AN ACT

RELATING TO THE SALE OF LEAD ACID BATTERIES; AMENDING SECTION 39-7003, IDAHO CODE, TO INCREASE THE FEE FOR A PERSON WHO PURCHASES A NEW LEAD ACID BATTERY AND TO INCREASE THE FEE WHEN ANY PERSON PRESENTS A USED LEAD ACID

BATTERY TO THE SELLER WITH A RECEIPT FOR THE PURCHASE OF A NEW BATTERY FROM THAT SELLER WITHIN THE THIRTY DAY PERIOD IMMEDIATELY FOLLOWING THE PURCHASE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-7003, Idaho Code, be, and the same is hereby amended to read as follows:

39-7003. SALE OF LEAD ACID BATTERIES -- FEE -- NOTICE. (1) A lead acid battery seller shall accept from customers at the point of transfer used lead acid batteries of the type and quantity sold at that point of transfer and may accept additional batteries. A lead acid battery seller shall post a written notice which is clearly visible in the public sales area of the establishment and which contains the following language:

"It is unlawful to dispose of a motor vehicle battery or other lead acid battery in a landfill or any unauthorized site.

Recycle all used batteries."

The seller is required by law to accept used lead acid batteries. When any new lead acid battery is purchased, an additional fee of ~~five~~ ten dollars (\$~~5~~10.00) will be charged unless a used battery is returned for refund within thirty (30) days.

(2) Each person who purchases a new lead acid battery shall be assessed a fee of ~~five~~ ten dollars (\$~~5~~10.00) per battery by the seller. A seller shall refund the ~~five~~ ten dollar (\$~~5~~10.00) fee to any person who presents a used lead acid battery to the seller with a receipt for the purchase of a new battery from that seller within the thirty (30) day period immediately following the purchase. A seller may keep any lead acid battery fee moneys which are not properly claimed within thirty (30) days after the date of sale.

(3) All lead acid batteries sold after July 1, 1992, shall bear a universally accepted recycling symbol.

(4) An advertisement or other printed promotional material related to the sale of lead acid batteries shall contain the following notice in bold print:

"A fee is imposed on the purchase of each new lead acid battery unless a used battery is returned where applicable."

(5) The provisions of this section do not apply to a person whose sales of batteries are not in the ordinary course of business.

(6) A wholesale seller of lead acid batteries who sells batteries to this state, to a political subdivision of this state or to a private entity which resells the batteries is not subject to the fees in this chapter.

(7) A person or entity who manufactures or sells equipment or vehicles, the final product of which includes a lead acid battery as a component part, is not subject to the fees in this chapter as long as the lead acid battery is attached to and is a component part of said equipment or vehicle.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 17, 2009.

CHAPTER 173
(H.B. No. 220)

AN ACT

RELATING TO THE DIVISION OF BUILDING SAFETY; AMENDING SECTION 39-4106, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REVISE MEMBERSHIP OF THE IDAHO BUILDING CODE BOARD; AMENDING SECTION 39-4109, IDAHO CODE, TO ADOPT 2006 EDITIONS OF CERTAIN CODES, TO PROVIDE FOR ADOPTION OF SUBSEQUENT EDITIONS, TO MAKE A TECHNICAL CORRECTION, TO PROHIBIT CERTAIN AMENDMENTS, TO PROVIDE FOR AN EFFECTIVE DATE FOLLOWING CODE ADOPTION AND TO PROVIDE FOR HEARINGS; AMENDING SECTION 39-4116, IDAHO CODE, TO PROVIDE FOR ADOPTION OF CERTAIN CODES, TO PROVIDE PROVISIONS RELATING TO THE ADOPTION OF CERTAIN CODES BY LOCAL JURISDICTIONS AND TO PROVIDE FOR HEARINGS AND NOTICE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-4106, Idaho Code, be, and the same is hereby amended to read as follows:

39-4106. IDAHO BUILDING CODE BOARD CREATED -- MEMBERSHIP -- APPOINTMENT -- TERMS -- QUORUM -- COMPENSATION -- MEETINGS. (1) The Idaho building code board is established within the division as an appeals, code adoption and rulemaking board, to be appointed by the governor, and shall consist of ~~nine ten~~ (9)10 members: one (1) member of the general public; one (1) local fire official; one (1) ~~registered licensed~~ engineer; one (1) licensed architect; two (2) local building officials, one (1) from a county and one (1) from a city; ~~one (1) homebuilder or general contractor~~ two (2) building contractors, one (1) residential contractor who is an active member of the Idaho building contractors association with construction knowledge based primarily on a work history of buildings regulated by the International Residential Code, and one (1) commercial contractor who is an active member of either the associated builders and contractors or the associated general contractors of America with construction knowledge based primarily on a work history of buildings regulated by the International Building Code; one (1) representative of the modular building industry; and one (1) individual with a disability from an organization that represents people with all types of disabilities. Board members shall be appointed for terms of four (4) years and until their successor has been appointed. Three (3) consecutive failures by a member to attend meetings of the board without reasonable cause shall constitute cause for removal of the member from the board by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(2) The members of the board shall, at their first regular meeting following the effective date of this chapter and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. A majority of the currently appointed members of the board shall constitute a quorum.

(3) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(h), Idaho Code, for each day spent in attendance at meetings of the board.

(4) The board shall meet for regular business sessions at the call of the administrator, chairman, or at the request of four (4) members of the board, provided that the board shall meet at least biannually.

SECTION 2. That Section 39-4109, Idaho Code, be, and the same is hereby amended to read as follows:

39-4109. APPLICATION OF CODES. (1) The following codes are hereby adopted ~~effective January 1, 2008,~~ for the state of Idaho division of building safety and shall only be applied by local governments as prescribed by section 39-4116, Idaho Code:

(1a) The 2003~~6~~ International Building Code shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process as established in section 67-5221, Idaho Code, and as further provided in subsection (5) of this section and in accordance with subsections (2) and (3) herein shall be in effect:

(a) Including appendices thereto pertaining to building accessibility;

(b) Excluding the incorporated electrical codes, mechanical code, fuel gas code, plumbing codes, fire codes or property maintenance codes other than specifically referenced subjects or sections of the International Fire Code;

(c) Including the incorporated International Residential Code, parts I, II, III, IV and IX; International Energy Conservation Code; and rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the fair housing act accessibility guidelines shall be included; and

(d) Replacing section 903.2.7 of the 2003~~6~~ International Building Code with sections 903.2.7, 903.2.8 and 903.2.9 of the 2000 International Building Code, which pertain to fire sprinklers in group R occupancies.

(2b) The 2003~~6~~ International Residential Code as published by the International Code Council, except for parts V, VI, VII and VIII as they pertain to mechanical, fuel gas, plumbing and electrical requirements shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Residential Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section shall be in effect;

(3c) The 2006 International Energy Conservation Code as published by the International Code Council shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Energy Conservation Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section shall be in effect; and

(4d) The ~~existing~~ 2003~~6~~ International Existing Building Code as published by the International Code Council shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Existing Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section shall be in effect.

(2) No amendments to the accessibility guidelines shall be made by the Idaho building code board that provide for lower standards of accessibility than those published by the International Code Council.

(3) No amendments to the International Residential Building Code shall be made by the Idaho building code board that provide for standards that are more restrictive than those published by the International Code Council.

(4) Any edition of the building codes adopted by the board will take effect on January 1 of the year following its adoption.

(5) In addition to the negotiated rulemaking process set forth in section 67-5221, Idaho Code, the board shall conduct a minimum of two (2) public hearings, not less than sixty (60) days apart. Express written notice of such public hearings shall be given by the board to each of the following entities not less than five (5) days prior to such hearing: associated general contractors of America, associated builders and contractors, association of Idaho cities, Idaho association of building officials, Idaho association of counties, Idaho association of REALTORS®, Idaho building contractors association, American institute of architects Idaho chapter, Idaho fire chiefs association, Idaho society of professional engineers, Idaho state independent living council, southwest Idaho building trades, Idaho building trades, and any other entity that, through electronic or written communication received by the administrator not less than twenty (20) days prior to such scheduled meeting, requests written notification of such public hearings.

SECTION 3. That Section 39-4116, Idaho Code, be, and the same is hereby amended to read as follows:

39-4116. LOCAL GOVERNMENT ADOPTION AND ENFORCEMENT OF BUILDING CODES. (1) Local governments enforcing building codes shall do so only in compliance with the provisions of this section. Local governments that have not previously instituted and implemented a code enforcement program prior to the effective date of this act may elect to implement a building code enforcement program by passing an ordinance evidencing the intent to do so. Local governments may contract with a public or private entity to administer their building code enforcement program.

(2) ~~By January 1, 2005, l~~Local governments that issue building permits and perform building code enforcement activities shall, by ordinance ~~ef-~~fective January 1 of the year following the adoption by the Idaho building code board, adopt the following codes as published by the International Code Council together with any amendments or revisions set forth in section 39-4109, Idaho Code, including subsequent versions of the International Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this chapter:

(a) International Building Code, including all rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the federal fair housing act accessibility guidelines;

(b) International Residential Code, parts I-IV and IX; and

(c) International Energy Conservation Code.

Local governments are not required by this chapter to adopt the other referenced codes in the International Building Code.

(3) Local governments may amend by ordinance the adopted codes or provisions of referenced codes to reflect local concerns, provided such amendments establish at least an equivalent level of protection to that of the adopted building code. A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code, except as provided in subsection (3) (a) and (b) of this section.

(a) A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code.

(b) A local jurisdiction shall not adopt any provision of the International Building Code or International Residential Code or appendices thereto, that has not been adopted or that has been expressly rejected or exempted from the adopted version of those codes by the Idaho building code board through the negotiated rulemaking process as provided in section 39-4109, Idaho Code. Provided however, that, after a finding by the local jurisdiction that good cause exists for such an amendment to such codes and that such amendment is reasonably necessary, a local ju-

risdiction may adopt such provision by ordinance in accordance with the provisions of chapter 9, title 50, Idaho Code, and provided further that such local jurisdiction shall conduct a public hearing and, provided further, that notice of the time and place of the public hearing shall be published in the official newspaper or paper of general circulation within the jurisdiction and written notice of each of such public hearing and the proposed language shall be given by the local jurisdiction to the local chapters of the entities identified in section 39-4109(5), Idaho Code, not less than thirty (30) days prior to such hearing. In the event that there are no local chapters of such entities identified in section 39-4109(5), Idaho Code, within the local jurisdiction holding the hearings, the notice shall be provided to the state associations of the respective entities.

(4) Local governments shall exempt agricultural buildings from the requirements of the codes enumerated in this chapter and the rules promulgated by the board. A county may issue permits for farm buildings to assure compliance with road setbacks and utility easements, provided that the cost for such permits shall not exceed the actual cost to the county of issuing the permits.

(5) Permits shall be governed by the laws in effect at the time the permit application is received.

(6) The division shall retain jurisdiction for in-plant inspections and installation standards for manufactured or mobile homes and for in-plant inspections and enforcement of construction standards for modular buildings and commercial coaches.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 17, 2009.

CHAPTER 174
(S.B. No. 1096)

AN ACT

RELATING TO PROCUREMENT REQUIREMENTS; AMENDING SECTION 67-2803, IDAHO CODE, TO PROVIDE AN EXCEPTION TO CERTAIN PROCUREMENT REQUIREMENTS FOR THE PROCUREMENT OF USED PERSONAL PROPERTY BY IRRIGATION DISTRICTS AND THEIR BOARDS OF CONTROL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2803, Idaho Code, be, and the same is hereby amended to read as follows:

67-2803. EXCLUSIONS. The procurement requirements established in this chapter shall not be applicable to:

(1) The acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government;

(2) Contracts or purchases wherein expenditures are less than twenty-five thousand dollars (\$25,000), provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board;

(3) Disbursement of wages or compensation to any employee, official or agent of a political subdivision for the performance of personal services for the political subdivision;

(4) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision;

(5) Procurement of an interest in real property;

(6) Procurement of insurance; ~~or~~

(7) Costs of participation in a joint powers agreement with other units of government; or

(8) Procurement of used personal property by irrigation districts and their boards of control.

Approved April 17, 2009.

CHAPTER 175
(S.B. No. 1151)

AN ACT

RELATING TO PAYDAY LOANS; AMENDING SECTION 28-46-402, IDAHO CODE, TO PROVIDE THAT A PAYDAY LOAN MADE IN THIS STATE IN VIOLATION OF THE LICENSING REQUIREMENT OF THE DEPARTMENT OF FINANCE IS VOID, UNCOLLECTIBLE AND UNENFORCEABLE, TO PROVIDE THAT FOR ANY SUCH PAYDAY LOAN THE DEBTOR IS NOT OBLIGATED TO PAY THE PRINCIPAL OR ANY FEE ASSOCIATED WITH SUCH PAYDAY LOAN, TO PROVIDE PROCEDURES, AND TO PROVIDE FOR CEASE AND DESIST ACTIONS BY THE DIRECTOR OF THE DEPARTMENT OF FINANCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 28-46-402, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-402. LICENSE REQUIRED. (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

(2) Any "supervised financial organization," as defined in section 28-41-301(45), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) A payday loan made in this state in violation of the licensing requirement of this section is void, uncollectible and unenforceable. For any such payday loan the debtor is not obligated to pay the principal or any fee associated with such payday loan. If a debtor has paid any part of the principal or fee, the debtor has a right to recover the payment from the person violating the provisions of this section or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. In the event the administrator initiates an administrative or civil action against a person who has violated the provisions of this section, the administrator shall be entitled to recover the principal and fees received by such person in a payday loan transaction made in violation of the provisions of this section.

(4) If the administrator finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promul-

gated under this act and pertinent to this part, the administrator may, in his discretion, order the person to cease and desist from the violations.

Approved April 17, 2009.

CHAPTER 176
(S.B. No. 1129)

AN ACT

RELATING TO THE REVISED UNIFORM ANATOMICAL GIFT ACT; AMENDING SECTION 39-3422, IDAHO CODE, TO REVISE DEFINITIONS, TO REMOVE A PROVISION REGARDING THE WITHHOLDING OR WITHDRAWING MEASURES NECESSARY TO ENSURE MEDICAL SUITABILITY OF AN ORGAN AND TO PROVIDE FOR THE RESOLUTION OF CONFLICT BETWEEN THE TERMS OF A DECLARATION OR DIRECTIVE AND THE EXPRESS OR IMPLIED TERMS OF A POTENTIAL ANATOMICAL GIFT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3422, Idaho Code, be, and the same is hereby amended to read as follows:

39-3422. EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH CARE DIRECTIVE. (1) In this section:

(a) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision ~~made~~ regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of an organ a part for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration expressly provides to the contrary, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 39-3409, Idaho Code. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

Approved April 17, 2009.

CHAPTER 177
(S.B. No. 1158)

AN ACT

RELATING TO THE MEDICALLY INDIGENT; AMENDING SECTION 20-605, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 31-3302, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 31-3501, IDAHO CODE, TO INCLUDE THE DEPARTMENT OF HEALTH AND WELFARE IN THE DECLARATION OF POLICY; AMENDING SECTION 31-3502, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 31-3503, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF BOARDS OF COUNTY COMMISSIONERS AND TO REMOVE OBSOLETE PROVISIONS; AMENDING SECTION 31-3503A, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE ADMINISTRATOR, TO REMOVE OBSOLETE PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 35, TITLE 31, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 31-3503C, 31-3503D, 31-3503E AND 31-3503F, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE DEPARTMENT, TO PROVIDE FOR COUNTY PARTICIPATION AND CONTRIBUTION, TO PROVIDE FOR MEDICAID ELIGIBILITY DETERMINATION AND TO PROVIDE FOR A MEDICAL HOME; AMENDING SECTION 31-3504, IDAHO CODE, TO PROVIDE AN EXCEPTION TO AN APPLICATION PURSUANT TO THE SECTION, TO REMOVE A PROVISION REGARDING A UNIFORM FORM AGREED TO BY CERTAIN PARTIES, TO PROVIDE THAT AN APPLICATION SHALL BE DEEMED AS CERTAIN CONSENT, TO PROVIDE A TIME FOR THE CLERK'S TRANSMISSION OF A COPY OF THE APPLICATION TO THE DEPARTMENT, TO CLARIFY LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-3505, IDAHO CODE, TO PROVIDE A TIME FOR FILING AN APPLICATION IF A CERTAIN REQUEST HAS BEEN DENIED BY THE DEPARTMENT; AMENDING SECTION 31-3505B, IDAHO CODE, TO REVISE THE LIMITATION ON COUNTY PAYMENT FOR A MEDICALLY INDIGENT RESIDENT; AMENDING SECTION 31-3507, IDAHO CODE, TO PROVIDE FOR A HOSPITAL'S NOTIFICATION TO THE DEPARTMENT FOLLOWING AN INITIAL REVIEW DETERMINATION, TO PROVIDE FOR TRANSFER OF A MEDICALLY INDIGENT PERSON BY THE DEPARTMENT UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR DEPARTMENT NONLIABILITY UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 31-3508, IDAHO CODE, TO REVISE THE RATE THE COUNTY MUST PAY FOR NECESSARY MEDICAL SERVICES OF A MEDICALLY INDIGENT PERSON AND TO REMOVE A CODE REFERENCE; AMENDING SECTION 31-3509, IDAHO CODE, TO REVISE TO WHOM A PROVIDER MUST SUBMIT ITS BILL, TO PROVIDE THE PURPOSE FOR SUBMISSION OF A BILL, TO REVISE TO WHOM CERTAIN PAYMENTS ARE TO BE PAID, TO PROVIDE FOR THE DISTRIBUTION OF PAYMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-3510, IDAHO CODE, TO PERMIT THE DEPARTMENT TO PURSUE CERTAIN SUBROGATION INTERESTS; AMENDING SECTION 31-3511, IDAHO CODE, TO PROVIDE CERTAIN VIOLATIONS AND PENALTIES IF A CERTAIN PERSON GIVES OR OMITTS GIVING CERTAIN INFORMATION TO THE DEPARTMENT OR FAILS TO COOPERATE WITH THE DEPARTMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-3517, IDAHO CODE, TO PROVIDE FOR A LIMITATION TO COUNTY RESPONSIBILITY UNDER THE CATASTROPHIC HEALTH CARE COST PROGRAM, TO REVISE THE COMPOSITION OF AND APPOINTMENT TO THE CATASTROPHIC HEALTH CARE COST PROGRAM BOARD, TO REMOVE CERTAIN CONTRACT AUTHORITY OF THE ADMINISTRATOR, TO REMOVE CERTAIN RULEMAKING AUTHORITY AND TO REVISE CERTAIN AUDIT RESPONSIBILITY; AMENDING SECTION 31-3518, IDAHO CODE, TO PROVIDE CERTAIN ADMINISTRATIVE RULEMAKING AUTHORITY; AMENDING SECTION 31-3519, IDAHO CODE, TO PROVIDE FOR SUBMISSION OF CERTAIN CLAIMS TO THE DEPARTMENT FOLLOWING A FINAL DETERMINATION BY THE COUNTY, TO PROVIDE FOR A DEPARTMENT CLAIM PROCESSING PROCEDURE AND FOR TIMELINES, TO REMOVE CERTAIN CLERK RESPONSIBILITIES AND TIMELINES AND TO REVISE THE AMOUNT A COUNTY IS OBLIGATED TO PAY; AMENDING SECTION

31-3553, IDAHO CODE, TO CORRECT A CODE REFERENCE; AMENDING SECTION 67-7903, IDAHO CODE, TO CORRECT A CODE REFERENCE; AND TO PROVIDE LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-605, Idaho Code, be, and the same is hereby amended to read as follows:

20-605. COSTS OF CONFINEMENT. The county wherein any court has entered an order pursuant to section 20-604, Idaho Code, shall pay all direct and indirect costs of the detention or confinement of the person to the governmental unit or agency owning or operating the jail or confinement facilities in which the person was confined or detained. The amount of such direct and indirect costs shall be determined on a per day per person basis by agreement between the county wherein the court entered the order and the county or governmental unit or agency owning or operating such jail or confinement facilities. In the absence of such agreement or order fixing the cost as provided in section 20-606, Idaho Code, the charge for each person confined or detained shall be the sum of thirty-five dollars (\$35.00) per day, plus the cost of any medical or dental services paid at the unadjusted medicaid rate of reimbursement as provided in section 31-3502(421), Idaho Code, unless a rate of reimbursement is otherwise established by contract or agreement; provided, however, that the county may determine whether the detained or confined person is eligible for any local, state, federal or private program that covers dental, medical and/or burial expenses. That person will be required to apply for those benefits, and any such benefits obtained may be applied to the detained or confined person's incurred expenses, and in the event of the death of such detained or confined person, the county wherein the court entered the order shall pay all actual burial costs. Release from an order pursuant to section 20-604, Idaho Code, for the purpose of a person receiving medical treatment shall not relieve the county of its obligation of paying the medical care expenses imposed in this section. In case a person confined or detained was initially arrested by a city police officer for violation of the motor vehicle laws of this state or for violation of a city ordinance, the cost of such confinement or detention shall be a charge against such city by the county wherein the order of confinement was entered. All payments under this section shall be acted upon for each calendar month by the second Monday of the month following the date of billing.

SECTION 2. That Section 31-3302, Idaho Code, be, and the same is hereby amended to read as follows:

31-3302. COUNTY CHARGES ENUMERATED. The following are county charges:
(1) Charges incurred against the county by virtue of any provision of this title.

(2) The compensation allowed by law to constables and sheriffs for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by or at the request of the prosecuting attorneys, and for other services in relation to criminal proceedings.

(3) The expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail. Provided that any medical expenses shall be paid at the unadjusted medicaid rate of reimbursement as provided in section 31-3502(421), Idaho Code, unless a rate of reimbursement is otherwise established by contract or agreement.

(4) The compensation allowed by law to county officers in criminal proceedings, when not otherwise collectible.

(5) The sum required by law to be paid to grand jurors and indigent witnesses in criminal cases.

(6) The accounts of the coroner of the county, for such services as are not provided to be paid otherwise.

(7) The necessary expenses incurred in the support of county hospitals, and the indigent sick and nonmedical assistance for indigents, whose support is chargeable to the county.

(8) The contingent expenses, necessarily incurred for the use and benefit of the county.

(9) Every other sum directed by law to be raised for any county purpose, under the direction of the board of county commissioners, or declared to be a county charge.

SECTION 3. That Section 31-3501, Idaho Code, be, and the same is hereby amended to read as follows:

31-3501. DECLARATION OF POLICY. It is the policy of this state that each person, to the maximum extent possible, is responsible for his or her own medical care and to that end, shall be encouraged to purchase his or her own medical insurance with coverage sufficient to prevent them from needing to request assistance pursuant to this chapter. However, in order to safeguard the public health, safety and welfare, and to provide suitable facilities and provisions for the care and hospitalization of persons in this state, and, in the case of medically indigent persons, to provide for the payment thereof, the respective counties of this state, and the administrator and the department shall have the duties and powers as hereinafter provided.

SECTION 4. That Section 31-3502, Idaho Code, be, and the same is hereby amended to read as follows:

31-3502. DEFINITIONS. As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning:

~~(1) "Medically indigent" means any person who is in need of necessary medical services and who, if an adult, together with his or her spouse, or whose parents or guardian if a minor, does not have income and other resources available to him from whatever source sufficient to pay for necessary medical services. Nothing in this definition shall prevent the board of county commissioners and administrator from requiring the applicant and obligated persons to reimburse the county and the catastrophic health care costs program, where appropriate, for all or a portion of their medical expenses, when investigation of their application pursuant to this chapter, determines their ability to do so.~~

~~(2) "Hospital" means a facility licensed and regulated pursuant to sections 39-1301 through 39-1314, Idaho Code, excluding state institutions.~~

~~(3) "Dependent" means any person whom a taxpayer could claim as a dependent under the income tax laws of the state of Idaho.~~

~~(4) "Applicant" means any person who is or may be requesting financial assistance under this chapter.~~

~~(5) "Reimbursement rates" means the unadjusted medicaid rate of reimbursement for medical charges allowed pursuant to title XIX of the social security act, as amended. For long term care facilities, maximum "reimbursement rates" means the unadjusted medicaid rate of reimbursement allowed pursuant to the medical assistance program as determined by chapter 1, title 56, Idaho Code, or the unadjusted medicare rate of reimbursement established under title XVIII of the social security act, as amended, whichever is greater.~~

~~(6) "Board" means the board of county commissioners.~~

~~(7) "Obligated persons" means those persons who are legally responsible for an applicant.~~

~~(8) "County hospital" means any county approved institution or facility for the care of sick persons.~~

~~(9) "Administrator" means the board of the catastrophic health care cost program, as provided in section 31-3517, Idaho Code.~~

~~(10) "Catastrophic health care costs" means all necessary medical expenses for services which are incurred by a recipient for which the reimbursement rate exceeds in aggregate the sum of ten thousand dollars (\$10,000) in any twelve (12) consecutive month period.~~

~~(11) "Recipient" means an individual determined eligible for necessary medical services under this chapter.~~

~~(12) "Resident" means a person with a home, house, place of abode, place of habitation, dwelling or place where he or she actually lived for a consecutive period of thirty (30) days or more within the state of Idaho. A resident does not include a person who comes into this state for temporary purposes, including, but not limited to, education, vacation, or seasonal labor. Entry into active military duty shall not change a person's residence for the purposes of this chapter. Those physically present within the following facilities and institutions shall be residents of the county where they were residents prior to entering the facility or institution:~~

~~(a) Correctional facilities;~~

~~(b) Nursing homes or residential or assisted living facilities;~~

~~(c) Other medical facility or institution.~~

~~(13) "Emergency service" means a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care.~~

~~(14) "Provider" means any person, firm, or corporation certified or licensed by the state of Idaho or holding an equivalent license or certification in another state, that provides necessary medical services as it appears on an application for assistance pursuant to this chapter.~~

~~(15) "Third party applicant" means a person other than an obligated person who completes, signs and files an application on behalf of a patient.~~

~~(16) "Clerk" means the clerk of the board or his or her designee.~~

~~(17) "Resources" means all property, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, all forms of public assistance, crime victim's compensation, worker's compensation, veterans benefits, medicaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. Resources shall include the ability of an applicant and obligated persons to pay for necessary medical services over a period of up to five (5) years. For purposes of determining approval for medical indigency only, resources shall not include the value of the homestead on the applicant or obligated persons' residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.~~

~~(18) A. "Necessary medical services" means a requested or provided medical service required in order to identify or treat a medically indigent person's health condition, illness or injury and is:~~

~~(a) Consistent with the symptoms, diagnosis or treatment of the medical indigent's condition, illness or injury;~~

~~(b) In accordance with generally accepted standards of medical or surgical practice then prevailing in the community where the services were provided;~~

~~(c) Furnished on an outpatient basis whenever it is safe, efficient and reasonable to do so;~~

~~(d) Not provided primarily for the convenience of the medically indigent person or the provider;~~

~~(e) The standard, most economical service or item that can safely, reasonably and ethically be provided.~~

~~B. Necessary medical services shall not include the following:~~

- ~~(a) Bone marrow transplants;~~
- ~~(b) Organ transplants;~~
- ~~(c) Elective, cosmetic and/or experimental procedures;~~
- ~~(d) Services related to, or provided by, residential and/or shelter care facilities;~~
- ~~(e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well baby care;~~
- ~~(f) Medicare copayments and deductibles;~~
- ~~(g) Services provided by, or available to an applicant from state, federal and local health programs; and~~
- ~~(h) Medicaid copayments and deductibles.~~

~~Provided however, each board may determine, by ordinance or resolution duly adopted in its county, to include as necessary medical services additional services not covered in this section. Necessary medical services provided by this option shall not be paid by the catastrophic health care costs program, and shall remain the liability of the respective county.~~

(1) "Administrator" means the board of the catastrophic health care cost program, as provided in section 31-3517, Idaho Code.

(2) "Applicant" means any person who is requesting financial assistance under this chapter.

(3) "Application" means an application for financial assistance pursuant to section 31-3504, Idaho Code.

(4) "Board" means the board of county commissioners.

(5) "Case management" means coordination of services to help meet a patient's health care needs, usually when the patient has a condition that requires multiple services.

(6) "Catastrophic health care costs" means the cost of medically necessary drugs, devices and services received by a recipient that, when paid at the then existing reimbursement rate, in aggregate exceed the sum of eleven thousand dollars (\$11,000) in any twelve (12) consecutive month period.

(7) "Clerk" means the clerk of the board or his or her designee.

(8) "County hospital" means any county approved institution or facility for the care of sick persons.

(9) "Department" means the department of health and welfare or its contractor.

(10) "Dependent" means any person whom a taxpayer could claim as a dependent under the income tax laws of the state of Idaho.

(11) "Emergency service" means a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care, including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent person who possesses an average knowledge of health and medicine, to result in:

(a) Placing the patient's health in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part.

(12) "Hospital" means a facility licensed and regulated pursuant to sections 39-1301 through 39-1314, Idaho Code, excluding state institutions.

(13) "Medicaid eligibility review" means the process used by the department to determine whether a person meets the criteria for medicaid coverage.

(14) "Medical home" means a model of primary and preventive care delivery in which the patient has a continuous relationship with a personal physician in a physician directed medical practice that is whole person oriented and where care is integrated and coordinated.

(15) "Medically indigent" means any person who is in need of necessary medical services and who, if an adult, together with his or her spouse, or whose parents or guardian if a minor, does not have income and other resources available to him from whatever source sufficient to pay for neces-

sary medical services. Nothing in this definition shall prevent the board of county commissioners and administrator from requiring the applicant and obligated persons to reimburse the county and the catastrophic health care costs program, where appropriate, for all or a portion of their medical expenses, when investigation of their application pursuant to this chapter, determines their ability to do so.

(16) A. "Necessary medical services" means health care services and supplies that:

(a) Health care providers, exercising prudent clinical judgment, would provide to a person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms;

(b) Are in accordance with generally accepted standards of medical practice;

(c) Are clinically appropriate, in terms of type, frequency, extent, site and duration and are considered effective for the covered person's illness, injury or disease;

(d) Are not provided primarily for the convenience of the person, physician or other health care provider; and

(e) Are not more costly than an alternative service or sequence of services or supply, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the person's illness, injury or disease.

B. Necessary medical services shall not include the following:

(a) Bone marrow transplants;

(b) Organ transplants;

(c) Elective, cosmetic and/or experimental procedures;

(d) Services related to, or provided by, residential, skilled nursing, assisted living and/or shelter care facilities;

(e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well-baby care;

(f) Medicare copayments and deductibles;

(g) Services provided by, or available to, an applicant from state, federal and local health programs; and

(h) Medicaid copayments and deductibles.

(17) "Obligated person" means the person or persons who are legally responsible for an applicant.

(18) "Primary and preventive health care" means the provision of professional health services that include health education and disease prevention, initial assessment of health problems, treatment of acute and chronic health problems and the overall management of an individual's health care services.

(19) "Provider" means any person, firm, or corporation certified or licensed by the state of Idaho or holding an equivalent license or certification in another state, that provides necessary medical services to a patient requesting a medically indigent status determination or filing an application for financial assistance.

(20) "Recipient" means an individual determined eligible for necessary medical services under this chapter.

(21) "Reimbursement rate" means the unadjusted medicaid rate of reimbursement for medical charges allowed pursuant to title XIX of the social security act, as amended.

(22) "Resident" means a person with a home, house, place of abode, place of habitation, dwelling or place where he or she actually lived for a consecutive period of thirty (30) days or more within the state of Idaho. A resident does not include a person who comes into this state for temporary purposes, including, but not limited to, education, vacation, or seasonal labor. Entry into active military duty shall not change a person's residence for the purposes of this chapter. Those physically present within the fol-

lowing facilities and institutions shall be residents of the county where they were residents prior to entering the facility or institution:

- (a) Correctional facilities;
- (b) Nursing homes or residential or assisted living facilities;
- (c) Other medical facility or institution.

(23) "Resources" means all property, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, all forms of public assistance, crime victims compensation, worker's compensation, veterans benefits, medicaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. Resources shall include the ability of an applicant and obligated persons to pay for necessary medical services, excluding any interest charges, over a period of up to five (5) years. For purposes of determining approval for medical indigency only, resources shall not include the value of the homestead on the applicant or obligated person's residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

(24) "Third party applicant" means a person other than an obligated person who completes, signs and files an application on behalf of a patient. A third party applicant who files an application on behalf of a patient pursuant to section 31-3504, Idaho Code, shall, if possible, deliver a copy of the application to the patient within three (3) business days after filing the application.

(25) "Utilization management" means the evaluation of medical necessity, appropriateness and efficiency of the use of health care services, procedures and facilities and may include, but is not limited to, preadmission certification, the application of practice guidelines, continued stay review, discharge planning, case management, preauthorization of ambulatory procedures, retrospective review and claims review.

SECTION 5. That Section 31-3503, Idaho Code, be, and the same is hereby amended to read as follows:

31-3503. POWERS AND DUTIES OF BOARDS OF COUNTY COMMISSIONERS. The boards of county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law:

(1) Care for and maintain the medically indigent residents of their counties as provided in this chapter up to ~~ten~~ eleven thousand dollars (\$~~10~~11,000) per claim in the aggregate over a consecutive twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code.

(2) Have the right to contract with providers, transfer patients, negotiate provider agreements, and all other powers incident to the county's duties created by this chapter.

(3) ~~From July 1, 1997, through June 30, 1998, pay for emergency services for a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and when necessary, for costs of transfer to the nonresident's place of residence, up to five thousand dollars (\$5,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code, unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement~~ Cooperate with the department and contractors retained by the department to provide services including, but not limited to, medicaid eligibility review and utilization management on behalf of the counties and the administrator.

(4) Have the jurisdiction and power to provide county hospitals and public general hospitals for the county and others who are sick, injured,

maimed, aged and infirm and to erect, enlarge, purchase, lease, or otherwise acquire, and to officer, maintain and improve hospitals, hospital grounds, nurses' homes, shelter care facilities and residential or assisted living facilities as defined in section 39-3301, Idaho Code, superintendent's quarters, medical clinics, as that term is defined in section 39-1319, Idaho Code, medical clinic grounds or any other necessary buildings, and to equip the same, and to replace equipment, and for this purpose said boards may levy an additional tax of not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the county. The term "public general hospitals" as used in this subsection shall be construed to include nursing homes.

SECTION 6. That Section 31-3503A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3503A. POWERS AND DUTIES OF ADMINISTRATOR. The administrator shall, under such limitations and restrictions as are prescribed by law:

(1) Pay for necessary medical services for a resident medically indigent person where the reimbursement rate for the claim exceeds in aggregate the sum of ~~ten~~ eleven thousand dollars (\$~~10~~1,000) during a consecutive twelve (12) month period;

(2) ~~From July 1, 1997, through June 30, 1998, pay for emergency services of a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and, when necessary, for costs of transfer to the nonresident's place of residence, where the reimbursement rate for the claim exceeds in the aggregate during a twelve (12) month period, the sum of five thousand dollars (\$5,000), unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement~~ Cooperate with the department and contractors retained by the department to provide services including, but not limited to, eligibility review and utilization management on behalf of the counties and the administrator;

(3) Require, as the administrator deems necessary, annual reports from each county and each hospital and provider including, but not limited to, the following:

(a) From each county and for each applicant:

- (i) ~~e~~Case number and the date services began;
- (ii) ~~a~~Age;
- (iii) ~~r~~Residence;
- (iv) ~~s~~Sex;
- (v) ~~d~~Diagnosis;
- (vi) ~~i~~Income;
- (vii) ~~f~~Family size;
- (viii) ~~a~~Amount of costs incurred including provider, legal and administrative charges;
- (ix) ~~a~~Approval or denial; and
- (x) ~~r~~Reasons for denial.

(b) From each hospital:

- (i) 990 tax forms or comparable information;
- (ii) ~~e~~Cost of charges where charitable care was provided; and
- (iii) ~~a~~Admistrative and legal costs incurred in processing claims under this chapter.

SECTION 7. That Chapter 35, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 31-3503C, 31-3503D, 31-3503E and 31-3503F, Idaho Code, and to read as follows:

31-3503C. POWERS AND DUTIES OF THE DEPARTMENT. The department shall:

(1) Design and manage a utilization management program and third party recovery system for the medically indigent program.

(2) Have the authority to engage one (1) or more contractors or third party administrators to perform the duties assigned to it pursuant to this chapter including, but not limited to, utilization management and third party recovery for the medically indigent program.

(3) Implement a medicaid eligibility determination process for all potential applicants.

(4) Develop and implement by July 1, 2010, in cooperation with the Idaho association of counties and the Idaho hospital association, a uniform form to be used for both the initial review, pursuant to section 31-3503E, Idaho Code, and the application for financial assistance pursuant to section 31-3504, Idaho Code.

(5) Cooperate with the counties and the administrator in providing the services required of it pursuant to this chapter.

(6) Promulgate rules to implement its duties and responsibilities under the provisions of this chapter.

31-3503D. COUNTY PARTICIPATION AND CONTRIBUTION. Every county shall fully participate in the utilization management program and third party recovery system and shall contribute to the medicaid eligibility review, utilization management program and third party recovery costs incurred by the department pursuant to section 31-3503E, Idaho Code. The contribution of each county shall be calculated by the department as defined in rule.

31-3503E. MEDICAID ELIGIBILITY DETERMINATION. The department shall:

(1) Require the hospital to undertake an initial review of a patient upon stabilization to determine whether the patient may be eligible for medicaid or may be medically indigent. If the hospital's initial review determines that the patient may be eligible for medicaid or may be medically indigent, require that the hospital transmit the initial review and a written request for medicaid eligibility determination to the department within one (1) working day of the completion of the initial review.

(2) Undertake a determination of possible medicaid eligibility upon receipt from the hospital of the initial review and written request for medicaid eligibility determination. The department will use the medicaid eligibility guidelines in place as of the date of submission of the written request, apply categorical and financial eligibility requirements and use all sources available to the department to obtain verification in making the determination.

(3) In order to ascertain medicaid eligibility, require the patient or the obligated person to cooperate with the department according to its rules in investigating, providing documentation, submitting to an interview and notifying the department of the receipt of resources after the initial review form has been submitted to the department.

(4) Promptly notify the hospital and clerk of potential medicaid eligibility and the basis of possible eligibility.

(5) Act on the initial review form as an application for medicaid if it appears that the patient may be eligible. An application for medicaid shall not be an application for financial assistance pursuant to section 31-3504, Idaho Code.

(6) Utilize the verification and cooperation requirement in department rule to complete the eligibility determination.

(7) Notify the patient or the obligated person, the hospital and the clerk of a denial and the reason therefor if the applicant fails to cooperate, fails to provide documentation necessary to complete the determination or is determined to be categorically or financially ineligible for medicaid. If, based on its medicaid eligibility review, the department determines that the patient is not eligible for medicaid but may be medically in-

igent, transmit a copy of the initial review to the clerk. The transmitted copy of the initial review shall be treated by the clerk as an application for financial assistance pursuant to section 31-3504, Idaho Code. Denial of medicaid eligibility is not a determination of medical indigence.

(8) Make income and resource information obtained from the medicaid eligibility determination process available to the county to assist in determination of medical indigency at the time the department notifies the county of the final medicaid eligibility determination.

31-3503F. MEDICAL HOME. The department shall create by rule a community-based system in which a medically indigent patient may be referred to a medical home upon discharge from hospital. The medical home shall provide ongoing primary and preventive care and case management with periodic reports to the department regarding the medically indigent patient's health status and participation in the patient's treatment plan. Appropriate reimbursement to the medical home provider for patient primary and preventive care services employing utilization management and case management shall be coordinated by the department.

SECTION 8. That Section 31-3504, Idaho Code, be, and the same is hereby amended to read as follows:

31-3504. APPLICATION FOR FINANCIAL ASSISTANCE. (1) Except as provided for in section 31-3503E, Idaho Code, an applicant requesting assistance under this chapter shall complete a written application on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association. The truth of the matters contained in the application shall be sworn to by the applicant. The application shall be deemed consent for the hospital, department, counties and administrator to exchange information pertaining to the applicant's health and finances for the purposes of determining medicaid eligibility or medical indigency. The application shall be signed by the applicant or on the applicant's behalf and filed in the clerk's office. Within one (1) business day of the filing of the application in the clerk's office, the clerk shall transmit a copy of the application to the department.

(2) If a third party application is filed, the application shall be as complete as ~~practical~~ practicable and presented in the same form and manner as set forth ~~above~~ in subsection (1) of this section.

(3) Follow-up necessary medical services based on a treatment plan, for the same condition, preapproved by the board, may be provided for a maximum of six (6) months from the date of the original application without requiring an additional application; however, a request for additional treatment not specified in the approved treatment plan shall be filed with the clerk ten (10) days prior to receiving services. Beyond the six (6) months, requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services and an updated application may be requested by the board.

(4) Upon application for financial assistance pursuant to this chapter an automatic lien shall attach to all real and personal property of the applicant and on insurance benefits to which the applicant may become entitled. The lien shall also attach to any additional resources to which it may legally attach not covered ~~above~~ in this section. The lien created by this section may be, in the discretion of the board, perfected as to real property and fixtures by recording, in any county recorder's office in this state in which the applicant and obligated ~~party person~~ own property, a notice of application for medical indigency benefits on a uniform form agreed to by the Idaho association of counties and the Idaho hospital association, which form shall be recorded as provided herein within thirty (30) days from receipt of an application, and such lien, if so recorded, shall have a priority date

as of the date the necessary medical services were provided. The lien created by this section may also be, in the discretion of the board, perfected as to personal property by filing with the secretary of state within thirty (30) days of receipt of an application, a notice of application in substantially the same manner as a filing under chapter 9, title 28, Idaho Code, except that such notice need not be signed and no fee shall be required, and, if so filed, such lien shall have the priority date as of the date the necessary medical services were provided. An application for assistance pursuant to this chapter shall waive any confidentiality granted by state law to the extent necessary to carry out the intent of this section.

SECTION 9. That Section 31-3505, Idaho Code, be, and the same is hereby amended to read as follows:

31-3505. TIME AND MANNER OF FILING APPLICATIONS AND REQUESTS. Applications and requests for necessary medical services shall be filed with the clerk according to the following time limits. Filing is complete upon receipt by the clerk.

(1) An application for nonemergency necessary medical services shall be filed ten (10) days prior to receiving services from the provider.

(2) An application for emergency necessary medical services shall be made any time within thirty-one (31) days beginning with the first day of the provision of necessary medical services from the provider or in the case of hospitalization, thirty-one (31) days beginning with the date of admission, or if a request for medicaid eligibility determination has been denied by the department pursuant to section 31-3503E, Idaho Code, within thirty-one (31) days of receiving notice of the denial.

(3) Requests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services.

(4) A delayed application for necessary medical services may be filed up to one hundred eighty (180) days beginning with the first day of the provision of necessary medical services provided that:

(a) Written documentation is included with the application or no later than forty-five (45) days after an application has been filed showing that a bona fide application or claim has been filed for social security disability insurance, supplemental security income, third party insurance, medicaid, medicare, crime victim's compensation, and/or worker's compensation. A bona fide application means that:

(i) The application was timely filed within the appropriate agency's application or claim time period; and

(ii) Given the circumstances of the patient and/or obligated persons, the patient and/or obligated persons, and given the information available at the time the application or claim for other resources is filed, would reasonably be expected to meet the eligibility criteria for such resources; and

(iii) The application was filed with the appropriate agency in such a time and manner that, if approved, it would provide for payment coverage of the bills included in the county application; and

(iv) In the discretion of the board, bills on a delayed application which would not have been covered by a successful application or timely claim to the other resource(s) may be denied by the board as untimely; and

(v) In the event an application is filed for supplemental security income, an Idaho medicaid application must also have been filed within the department of health and welfare's application or claim time period to provide payment coverage of eligible bills included in the county application.

(b) Failure by the patient and/or obligated persons to complete the application process described in this section, up to and including any reasonable appeal of any denial of benefits, with the applicable program noted in paragraph (a) of this subsection, shall result in denial of the county assistance application.

(5) Any application or request which fails to meet the provisions of this section, and/or other provisions of this chapter, shall be denied.

(6) In the event that a county determines that a different county is the obligated county, an application may be filed in the other county within thirty (30) days of the date of the initial county denial.

SECTION 10. That Section 31-3505B, Idaho Code, be, and the same is hereby amended to read as follows:

31-3505B. APPROVAL. The board shall approve an application for assistance if it determines that necessary medical services have been or will be provided to a medically indigent person in accordance with this chapter; provided, the amount paid by the county for any medically indigent resident shall not exceed in aggregate the sum of ~~ten~~ eleven thousand dollars (\$11,000) per applicant for any consecutive twelve (12) month period.

SECTION 11. That Section 31-3507, Idaho Code, be, and the same is hereby amended to read as follows:

31-3507. NOTICE OF ADMISSION AND TRANSFER OF A MEDICALLY INDIGENT PATIENT. (1) A hospital shall notify the department and the clerk of the county or counties responsible within one (1) working day of ~~identifying a~~ its initial review determination pursuant to section 31-3503E, Idaho Code, that the patient as is potentially medically indigent. The notice ~~of admission~~ shall include the following if available:

- (a) Name, address, telephone number, date of birth, social security number and date of admission of the patient;
- (b) Name, address and telephone number of responsible party;
- (c) Name of attending physician;
- (d) Diagnosis and/or reason for admission;
- (e) Name, address and telephone number of the person completing the notice of admission.

(2) ~~A~~ The department, a county or administrator shall have the right to have an approved medically indigent person transferred to a hospital or facility, in accordance with requirements of the federal emergency medical treatment and active labor act, 42 U.S.C., section 1395d.d.; provided however, treatment for the necessary medical service must be available at the designated facility, and the department and the county contract physician, or the attending physician if no county contract physician is available, must certify that the transfer of such person would not present a significant risk of further injury. The department, the county, the administrator, and hospital from which or to which a person is taken or removed as herein provided, as well as the attending physician(s), shall not be liable in any manner whatsoever and shall be immune from suit for any causes of action arising from a transfer performed in accordance with this section. The immunities and freedom from liability granted pursuant to this section shall extend to any person, firm or corporation acting in accordance with this section.

SECTION 12. That Section 31-3508, Idaho Code, be, and the same is hereby amended to read as follows:

31-3508. AMOUNT OF AID FOR NECESSARY MEDICAL SERVICES. The county responsible for payment of necessary medical services of a medically in-

igent person shall pay an amount not to exceed the ~~reimbursement rates to the provider rendering such services~~ amount recommended by the utilization management program and the current medicaid rate. The bill submitted for payment ~~pursuant to section 31-3519, Idaho Code,~~ shall show the total provider charges less any amounts which have been received under any other federal or state law. Bills of less than twenty-five dollars (\$25.00) shall not be presented for payment.

SECTION 13. That Section 31-3509, Idaho Code, be, and the same is hereby amended to read as follows:

31-3509. COLLECTIONS BY PROVIDERS. Providers making claims for necessary medical services of medically indigent persons shall make all reasonable efforts to determine liability for the account so incurred from any available insurance or other sources available for payment of such expenses prior to submitting the bill to the county department for payment review. In the event that a provider has been notified that an individual qualifies for approval of benefits, such provider(s) shall submit a bill to third party insurance, medicaid, medicare, crime victims compensation and/or worker's compensation for payment within thirty (30) days of such notice. In the event any payments are thereafter received for charges which have been paid by a county and/or the administrator pursuant to the provisions of this chapter, said sums up to the amount actually paid by the county and/or the administrator shall be paid over to ~~such county and/or administrator~~ the department within sixty (60) days of receiving such payment from other resources. The department shall distribute the payment to the county and/or administrator pursuant to section 31-3510A, Idaho Code.

SECTION 14. That Section 31-3510, Idaho Code, be, and the same is hereby amended to read as follows:

31-3510. RIGHT OF SUBROGATION. Upon payment of a claim for necessary medical services pursuant to this chapter, the county and the catastrophic health care costs program making such payment shall become subrogated to all the rights of the hospital and other providers and to all rights of the medically indigent person against any third parties who may be the cause of or liable for such necessary medical services. The department may pursue collection of the county's and the administrator's subrogation interests.

SECTION 15. That Section 31-3511, Idaho Code, be, and the same is hereby amended to read as follows:

31-3511. VIOLATIONS AND PENALTIES. (1) Any applicant or obligated person who ~~wilfully~~ willfully gives false or misleading information to the department, a hospital, a county or an agent thereof, or to any individual in order to obtain necessary medical services as or for a medically indigent person, or any person who obtains necessary medical services as a medically indigent person who fails to disclose insurance, worker's compensation, resources, or other benefits available to him as payment or reimbursement of such expenses incurred, shall be guilty of a misdemeanor and punishable under the general provisions for punishment of a misdemeanor. In addition, any applicant who fails to cooperate with the department or a county or makes a material misstatement or material omission to the department in a request for medicaid eligibility determination, pursuant to section 31-3503E, Idaho Code, or a county in an application pursuant to this chapter shall be ineligible for nonemergency assistance under this chapter for a period of two (2) years.

(2) The board shall not have jurisdiction to hear and shall not approve an application for necessary medical services unless an application in the

form prescribed by this chapter is received by the clerk in accordance with the provisions of this chapter.

(3) The board may deny an application if material information required in the application or request is not provided by the applicant or a third party or if the applicant has divested himself or herself of resources within one (1) year prior to filing an application in order to become eligible for assistance pursuant to this chapter. An applicant who is sanctioned by federal or state authorities and loses medical benefits as a result of failing to cooperate with the respective agency or making a material misstatement or material omission to the respective agency shall be ineligible for assistance pursuant to this chapter for the period of such sanction.

(4) If the board fails to act upon an application within the ~~time-lines~~ timelines required under this chapter, the application shall be deemed approved and payment made as provided in this chapter.

(5) An applicant may appeal a decision rendered by the board pursuant to this section in the manner provided in section 31-1506, Idaho Code.

SECTION 16. That Section 31-3517, Idaho Code, be, and the same is hereby amended to read as follows:

31-3517. ESTABLISHMENT OF A CATASTROPHIC HEALTH CARE COST PROGRAM. (1) The governing board of the catastrophic health care cost program created by the counties pursuant to a joint exercise of powers agreement, dated October 1, 1984, and serving on June 30, 1991, is hereby continued as such through December 31, 1992, to complete the affairs of the board, to continue to pay for those medical costs incurred by participating counties prior to October 1, 1991, until all costs are paid or the moneys in the catastrophic health care cost account contributed by participating counties are exhausted, and to pay the balance of such contributions back to the county of origin in the proportion contributed. County responsibility shall be limited to the first ~~ten~~ eleven thousand dollars (\$~~10~~11,000) per claim. The remainder of the eligible costs of the claim shall be paid by the state catastrophic health care cost program.

(2) Commencing October 1, 1991, a catastrophic health care cost program board is hereby established, and the board shall be the administrator of the catastrophic health care cost program. This board shall consist of ~~seven~~ twelve (~~7~~12) members, with six (6) county commissioners, one (1) from each of the six (6) districts or regions established by the Idaho association of counties, four (4) members of the legislature, with one (1) each being appointed by the president pro tempore of the senate, the leader of the minority party of the senate, the speaker of the house of representatives and the leader of the minority party of the house of representatives, one (1) member appointed by the director of the department of health and welfare, and one (1) member appointed by the governor.

(a) The county commissioner members shall be elected by the boards of county commissioners of the member counties of each district or region, with each board of county commissioners entitled to one (1) vote. The process and procedures for conducting the election and determining the members shall be determined by the board itself, except that the election must be conducted, completed and results certified by December 31 of each year in which an election for members is conducted. The board recognized in subsection (1) of this section shall authorize and conduct the election in 1991.

(b) The term of office of a member shall be two (2) years, commencing on January 1 next following election or appointment, except that for commissioner members elected in 1991, the commissioner members from districts or regions 1, 3 and 5 shall serve for a term of one (1) year, and the commissioner members from districts or regions 2, 4 and 6 shall serve for a term of two (2) years. Members may be reelected or

reappointed. Election or appointment to fill vacancies shall be for the balance of the unexpired term.

(c) ~~The members appointed by the governor shall be compensated~~ reimbursed as provided in section 59-509(b), Idaho Code, from the catastrophic health care cost account.

(d) At the first meeting of the board in January of each year, the board shall organize by electing a chair, a vice-chair, and such other officers as desired.

~~(3) The administrator is authorized to contract with a health insurance company, group health services organization or other provider of third party payment for health services authorized to do business in this state, or to establish a self insurance fund in order to implement a catastrophic health care costs program.~~

~~The contract shall provide that the health insurance company, group health service organization or other third party payer, shall, for consideration, which shall be set by the administrator, assume the risk of providing for recipients under the catastrophic health care cost provisions of this chapter.~~

~~The administrator shall develop rules for a catastrophic health care cost program after consulting with the counties, organizations representing the counties, health care providers, and organizations representing health care providers.~~

The administrator legislative council shall cause a full and complete audit of the financial statements of the program as required in section 67-450B702, Idaho Code.

(4) The administrator shall submit a request to the governor and the legislature in accordance with the provisions of chapter 35, title 67, Idaho Code, for an appropriation for the maintenance and operation of the catastrophic health care program.

SECTION 17. That Section 31-3518, Idaho Code, be, and the same is hereby amended to read as follows:

31-3518. ADMINISTRATIVE RESPONSIBILITY. (1) The administrator shall, in order to facilitate payment to providers participating in the county medically indigent program and the catastrophic health care cost program, have on file the reimbursement rates allowed for all participating providers of medical care. However, in no event shall the amount to be paid exceed the usual, reasonable, and customary charges for the area.

(2) The administrator may contract with an independent contractor to provide services to manage and operate the program, or the administrator may employ staff to manage and operate the program.

(3) The administrator shall develop rules for a catastrophic health care cost program after consulting with the counties, organizations representing the counties, health care providers and organizations representing health care providers.

(4) The administrator shall submit all proposed rules to the legislative council for review prior to adoption, in a manner substantially the same as proposed executive agency rules are reviewed under chapter 52, title 67, Idaho Code. Following adoption, the administrator shall submit all adopted rules to the legislature for review in a manner substantially the same as adopted executive agency rules are reviewed under chapter 52, title 67, Idaho Code. The legislature, by concurrent resolution, may modify, amend, or repeal any rule of the administrator.

SECTION 18. That Section 31-3519, Idaho Code, be, and the same is hereby amended to read as follows:

31-3519. PAYMENT FOR SERVICES. Each board of county commissioners shall make payments to providers for covered services provided to the medically indigent as follows:

(1) Upon receipt of a final determination by the county approving an application for necessary medical services, an applicant, a provider, or the third party on behalf of the applicant, shall, within sixty (60) days, submit the claim to the department for its utilization management review pursuant to section 31-3503C, Idaho Code. The department shall forward the reviewed claim to the responsible county. The forwarded claim shall be a county claim in accordance with the procedures provided in pursuant to chapter 15, title 31, Idaho Code. The clerk shall calculate, or cause to be calculated, the medical provider reimbursement rate.

(2) Payment shall be made to providers on behalf of an applicant and shall be made on the next payment cycle ~~after all necessary forms are presented by the claimant to the county and the clerk has determined the medical provider reimbursement rate.~~ In no event shall payment be delayed longer than sixty (60) days from receipt of the ~~county claim or provider bill~~ department's reviewed claim.

(3) Payment to a provider pursuant to this chapter shall be payment of the debt in full and the provider shall not seek additional funds from the applicant.

(4) In no event shall a county be obligated to pay, pursuant to this chapter, an amount which exceeds the ~~reimbursement rate for the entire medical bill as calculated above~~ reviewed claim as determined by the department.

(5) The ~~clerk~~ department shall forward ~~appropriate~~ appropriate claims exceeding eleven thousand dollars (\$11,000) per recipient in a consecutive twelve (12) month period to the catastrophic health care costs program within fourteen (14) days after determining an applicant's eligibility for that program and shall include a statement of which costs the clerk has or intends to pay.

(6) The catastrophic health care cost program shall, within forty-five (45) days after approval by the administrator, submit the claim to the state controller for payment.

SECTION 19. That Section 31-3553, Idaho Code, be, and the same is hereby amended to read as follows:

31-3553. ADVISORY DECISIONS OF PANEL. The general responsibility of the advisory panel will be to consider the eligibility of applicants on claims referred to them and render written opinions regarding such eligibility of applicants as based upon review of analysis of the resources available to the applicant, as defined in section 31-3502-~~(17)~~, Idaho Code. Following proceedings on each claim, the advisory panel shall provide the affected parties with its comments and observations with respect to the claim. They shall indicate in such comments whether the applicant appears to have resources available to him or her sufficient to pay for necessary medical services; does not have adequate resources; or any comments or observations which may be relevant and appropriate. The findings of the advisory panel may be used by affected parties in resolving contested claims in a manner consistent with the findings presented. However, such findings will be advisory in nature only and not binding on any of the affected parties.

SECTION 20. That Section 67-7903, Idaho Code, be, and the same is hereby amended to read as follows:

67-7903. VERIFICATION OF LAWFUL PRESENCE -- EXCEPTIONS -- REPORTING. (1) Except as otherwise provided in subsection (3) of this section or where exempted by federal law, each agency or political subdivision of this state shall verify the lawful presence in the United States of each natural

person eighteen (18) years of age or older who applies for state or local public benefits or for federal public benefits for the applicant.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

(3) Verification of lawful presence in the United States shall not be required:

(a) For any purpose for which lawful presence in the United States is not required by law, ordinance or rule;

(b) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

(c) For short-term, noncash, in-kind emergency disaster relief;

(d) For public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(e) For programs, services or assistance, such as soup kitchens, crisis counseling and intervention and short-term shelter specified by federal law or regulation that:

(i) Deliver in-kind services at the community level, including services through public or private nonprofit agencies;

(ii) Do not condition the provision of assistance, the amount of assistance provided or the cost of assistance provided on the individual recipient's income or resources; and

(iii) Are necessary for the protection of life or public safety;

(f) For prenatal care;

(g) For postnatal care not to exceed twelve (12) months; or

(h) For food assistance for a dependent child under eighteen (18) years of age.

Notwithstanding the provisions of this subsection (3), for the county indigent program, the limitations contained in section 31-3502(186)B., Idaho Code, shall apply.

(4) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen (18) years of age or older for federal public benefits or state or local public benefits by:

(a) Employing electronic means to verify an applicant is legally present in the United States; or

(b) Requiring the applicant to provide:

(i) An Idaho driver's license or an Idaho identification card issued pursuant to section 49-2444, Idaho Code; or

(ii) A valid driver's license or similar document issued for the purpose of identification by another state or territory of the United States, if such license or document contains a photograph of the individual or such other personal identifying information relating to the individual that the director of the department of health and welfare or, with regard to unemployment compensation benefits, the director of the department of labor finds, by rule, sufficient for purposes of this section; or

(iii) A United States military card or a military dependent's identification card; or

(iv) A United States coast guard merchant mariner card; or

(v) A native American tribal document; or

(vi) A valid United States passport; and

(c) Requiring the applicant to provide a valid social security number that has been assigned to the applicant; and

(d) Requiring the applicant to attest, under penalty of perjury and on a form designated or established by the agency or the political subdivision, that:

- (i) The applicant is a United States citizen or legal permanent resident; or
- (ii) The applicant is otherwise lawfully present in the United States pursuant to federal law.

(5) Notwithstanding the requirements of subsection (4) (b) of this section, the agency or political subdivision may establish by appropriate legal procedure such rules or regulations to ensure that certain individuals lawfully present in the United States receive authorized benefits including, but not limited to, homeless state citizens.

(6) For an applicant who has attested pursuant to subsection (4) (d) of this section stating that the applicant is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, which may be referred to as the "SAVE" program, operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the attestation may be presumed to be proof of lawful presence for purposes of this section.

(a) Errors and significant delays by the SAVE program shall be reported to the United States department of homeland security to ensure that the application of the SAVE program is not wrongfully denying benefits to legal residents of this state.

(b) Agencies or political subdivisions may adopt variations of the requirements of subsection (4) (d) of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances in which the verification procedures in this section would impose unusual hardship on a legal resident of this state; except that the variations shall be no less stringent than the requirements of subsection (4) (d) of this section.

(c) A person who knowingly makes a false, fictitious or fraudulent statement or representation in an attestation executed pursuant to subsection (4) (d) or (6) (b) of this section shall be guilty of a misdemeanor.

(7) An agency or political subdivision may accept as prima facie evidence of an applicant's lawful presence in the United States the information required in subsection (4) of this section, as may be modified by subsection (5) of this section, when issuing a professional license or a commercial license.

SECTION 21. LEGISLATIVE INTENT. It is the intent of the Legislature that the revisions to Chapter 35, Title 31, Idaho Code, contained in this act, be reviewed by the Legislature three (3) years following the effective date of this act.

Approved April 17, 2009.

CHAPTER 178
(S.B. No. 1013)

AN ACT

RELATING TO THE COMMISSION FOR LIBRARIES; AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE THAT THE BOARD OF LIBRARY COMMISSIONERS IS WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 33-2502, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE APPOINTMENT, REMOVAL AND TERMS OF THE BOARD OF LIBRARY COMMISSIONERS AND TO REVISE TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of dentistry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board, as provided by chapter 29, title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54,

Idaho Code; and the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; ~~manufactured home advisory housing~~ board, chapter 21, title 44, Idaho Code; electrical board, chapter 10, title 54, Idaho Code; public works contractors license board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code; and modular buildings advisory board, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(f) The board of library commissioners, pursuant to section 33-2502, Idaho Code.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 2. That Section 33-2502, Idaho Code, be, and the same is hereby amended to read as follows:

33-2502. BOARD OF LIBRARY COMMISSIONERS -- ~~MEMBERSHIP APPOINTMENT, REMOVAL AND TERMS~~ -- OFFICERS -- MEETINGS -- COMPENSATION. ~~The Idaho commission for libraries shall be governed by the board of library commissioners.~~ The board of library commissioners shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be maintained within the office of the state board of education department of self-governing agencies and shall consist of five (5) commissioners appointed by the ~~state board of education~~ governor. The board shall nominate to the governor qualified candidates to fill any board vacancy. The governor shall consider geographic representation when selecting board commissioners by appointing one (1) board commissioner from the northern part of the state, one (1) board commissioner from the eastern part of the state, one (1) board commissioner from the southwestern part of the state and one (1) board commissioner from each of the two (2) congressional districts. The state board of education shall annually appoint one (1) commissioner for a term of five (5) years Appointments are for five (5) year terms and commissioners may serve more than one (1) term. At the end of a term, the commissioner shall continue to serve until a successor is appointed and qualifies. A vacancy on the board of library commissioners shall be filled in the same manner as regular appointments and shall be for the unexpired portion of the term. The governor may remove board commissioners for cause including, but not limited to, frequent absences from board meetings. The board of library commissioners shall annually elect a chairman, vice chairman and other officers as it deems reasonably necessary. The board of library commissioners shall meet at least twice each year. Commissioners shall be compensated as provided by section 59-509(n), Idaho Code.

Approved April 17, 2009.

CHAPTER 179
(S.B. No. 1174)

AN ACT

APPROPRIATING MONEYS TO THE STATE TAX COMMISSION FOR FISCAL YEAR 2010; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; PROVIDING LEGISLATIVE INTENT ON PERSONNEL COSTS; DIRECTING SALARY REDUCTIONS; REDUCING THE SALARY OF THE TAX COMMISSIONERS BY THREE PERCENT FOR FISCAL YEAR 2010; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Tax Commission in the Department of Revenue and Taxation the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2009, through June 30, 2010:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. GENERAL SERVICES:				
FROM:				
General Fund	\$3,624,800	\$3,224,400		\$6,849,200
Multistate Tax Compact Fund		46,700	\$69,900	116,600
Administration and Accounting Fund	5,900	30,600		36,500
Administration Services for Transportation Fund	436,500	417,300	267,800	1,121,600
Seminars and Publications Fund		13,100		13,100
Abandoned Property Trust - Unclaimed Property Fund		<u>104,600</u>	<u>60,300</u>	<u>164,900</u>
TOTAL	<u>\$4,067,200</u>	<u>\$3,836,700</u>	<u>\$398,000</u>	<u>\$8,301,900</u>
II. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	\$9,895,300	\$1,360,700		\$11,256,000
Multistate Tax Compact Fund	1,270,600	457,700		1,728,300
Administration and Accounting Fund	11,700	24,400		36,100
Administration Services for Transportation Fund	1,581,900	326,900		1,908,800
Abandoned Property Trust - Unclaimed Property Fund	<u>473,600</u>	<u>196,000</u>		<u>669,600</u>
TOTAL	<u>\$13,233,100</u>	<u>\$2,365,700</u>		<u>\$15,598,800</u>
III. REVENUE OPERATIONS:				
FROM:				
General Fund	\$2,806,000	\$1,288,500		\$4,094,500
Multistate Tax Compact Fund		500		500
Administration and Accounting Fund	95,200	88,400		183,600
Administration Services for Transportation Fund	525,700	212,200	\$2,300	740,200
Seminars and Publications Fund		14,400		14,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Abandoned Property Trust - Unclaimed Property Fund	<u>67,500</u>	<u>500</u>	<u> </u>	<u>68,000</u>
TOTAL	\$3,494,400	\$1,604,500	\$2,300	\$5,101,200
IV. COUNTY SUPPORT:				
FROM:				
General Fund	\$2,430,000	\$533,700		\$2,963,700
Seminars and Publications Fund		<u>97,000</u>	<u>\$30,000</u>	<u>127,000</u>
TOTAL	\$2,430,000	\$630,700	\$30,000	\$3,090,700
GRAND TOTAL	\$23,224,700	\$8,437,600	\$430,300	\$32,092,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Tax Commission is authorized no more than four hundred thirteen and five-tenths (413.5) full-time equivalent positions at any point during the period July 1, 2009, through June 30, 2010, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature to retain to the extent possible, our capable, quality employees who support the essential services and statutorily authorized programs that the citizens of Idaho expect. The Legislature finds these critical essential services to be those that maintain the health and safety of our citizens and the education of our children. While extending flexibility to the Governor and agency directors to manage the state workforce to the best of their ability during these difficult times, it remains the responsibility of the Legislature to identify priorities for the state workforce. The Legislature finds that reductions in personnel funding shall first be managed through salary reductions that impact all personnel fairly; secondly, be mitigated by the use of existing salary savings; thirdly, by using savings created by keeping newly vacated positions unfilled; fourth, by the use of furloughs; and lastly, as a last resort, by reducing the workforce. It is the intent of the Legislature that these policies shall be adhered to by the executive, legislative, and judicial branches to the extent allowed by law.

SECTION 4. SALARY REDUCTION. Inasmuch as salary reductions will save jobs; and inasmuch as a five percent (5%) reduction in personnel funding may create a reduction in force; and inasmuch as the state as a single employer of multiple departments and agencies is required by law to direct across the board salary adjustments; agencies and institutions shall reduce all salaries of classified and nonclassified employees, regardless of fund source, by three percent (3%) for fiscal year 2010, beginning on June 14, 2009, through June 12, 2010. Agencies shall use personnel cost savings, furloughs, and a reduction in force to manage the remaining two percent (2%) in funding reductions. The Division of Human Resources shall adjust all pay schedules for the classified personnel system downward to the extent that all beginning minimum salaries are three percent (3%) less than those in effect upon the date of passage of this law.

SECTION 5. COMMISSIONER SALARIES. Notwithstanding Section 63-102(1), Idaho Code, the salaries for the State Tax Commissioners shall be \$82,884 for the period July 1, 2009, through June 30, 2010.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Sections 4 and 5 of this act shall be in full force and effect on and after passage and approval.

Approved April 17, 2009.

CHAPTER 180
(S.B. No. 1173)

AN ACT

APPROPRIATING MONEYS TO THE BOARD OF TAX APPEALS FOR FISCAL YEAR 2010; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; PROVIDING LEGISLATIVE INTENT ON PERSONNEL COSTS; DIRECTING SALARY REDUCTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Board of Tax Appeals in the Department of Revenue and Taxation the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 2009, through June 30, 2010:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	\$441,400	\$65,100	\$506,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Board of Tax Appeals is authorized no more than six (6) full-time equivalent positions at any point during the period July 1, 2009, through June 30, 2010, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature to retain to the extent possible, our capable, quality employees who support the essential services and statutorily authorized programs that the citizens of Idaho expect. The Legislature finds these critical essential services to be those that maintain the health and safety of our citizens and the education of our children. While extending flexibility to the Governor and agency directors to manage the state workforce to the best of their ability during these difficult times, it remains the responsibility of the Legislature to identify priorities for the state workforce. The Legislature finds that reductions in personnel funding shall first be managed through salary reductions that impact all personnel fairly; secondly, be mitigated by the use of existing salary savings; thirdly, by using savings created by keeping newly vacated positions unfilled; fourth, by the use of furloughs; and lastly, as a last resort, by reducing the workforce. It is the intent of the Legislature that these policies shall be adhered to by the executive, legislative, and judicial branches to the extent allowed by law.

SECTION 4. SALARY REDUCTION. Inasmuch as salary reductions will save jobs; and inasmuch as a five percent (5%) reduction in personnel funding may create a reduction in force; and inasmuch as the state as a single employer of multiple departments and agencies is required by law to direct across the board salary adjustments; agencies and institutions shall reduce all salaries of classified and nonclassified employees, regardless of fund source, by three percent (3%) for fiscal year 2010, beginning on June 14,

2009 through June 12, 2010. Agencies shall use personnel cost savings, furloughs, and a reduction in force to manage the remaining two percent (2%) in funding reductions. The Division of Human Resources shall adjust all pay schedules for the classified personnel system downward to the extent that all beginning minimum salaries are three percent (3%) less than those in effect upon the date of passage of this law.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 4 of this act shall be in full force and effect on and after passage and approval.

Approved April 17, 2009.

CHAPTER 181
(S.B. No. 1172)

AN ACT

APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 2010; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; PROVIDING LEGISLATIVE INTENT ON PERSONNEL COSTS; DIRECTING SALARY REDUCTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Lava Hot Springs Foundation the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 2009, through June 30, 2010:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Lava Hot Springs Foundation Fund	\$797,500	\$753,000	\$75,300	\$1,625,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Lava Hot Springs Foundation is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2009, through June 30, 2010, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature to retain to the extent possible, our capable, quality employees who support the essential services and statutorily authorized programs that the citizens of Idaho expect. The Legislature finds these critical essential services to be those that maintain the health and safety of our citizens and the education of our children. While extending flexibility to the Governor and agency directors to manage the state workforce to the best of their ability during these difficult times, it remains the responsibility of the Legislature to identify priorities for the state workforce. The Legislature finds that reductions in personnel funding shall first be managed through salary reductions that impact all personnel fairly; secondly, be mitigated by the use of existing salary savings; thirdly, by using savings created by keeping newly vacated positions unfilled; fourth, by the use of furloughs; and lastly, as a last resort, by reducing the workforce. It is the intent of the

Legislature that these policies shall be adhered to by the executive, legislative, and judicial branches to the extent allowed by law.

SECTION 4. SALARY REDUCTION. Inasmuch as salary reductions will save jobs; and inasmuch as a five percent (5%) reduction in personnel funding may create a reduction in force; and inasmuch as the state as a single employer of multiple departments and agencies is required by law to direct across the board salary adjustments; agencies and institutions shall reduce all salaries of classified and nonclassified employees, regardless of fund source, by three percent (3%) for fiscal year 2010, beginning on June 14, 2009 through June 12, 2010. Agencies shall use personnel cost savings, furloughs, and a reduction in force to manage the remaining two percent (2%) in funding reductions. The Division of Human Resources shall adjust all pay schedules for the classified personnel system downward to the extent that all beginning minimum salaries are three percent (3%) less than those in effect upon the date of passage of this law.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 4 of this act shall be in full force and effect on and after passage and approval.

Approved April 17, 2009.

CHAPTER 182
(S.B. No. 1171)

AN ACT

APPROPRIATING MONEYS TO THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2010; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING A CONTINUOUS APPROPRIATION FOR CERTAIN COSTS; EXPRESSING LEGISLATIVE INTENT REGARDING THE TRANSFER OF MONEYS FROM THE EARNINGS RESERVE FUNDS TO THE INCOME FUNDS; PROVIDING LEGISLATIVE INTENT ON PERSONNEL COSTS; DIRECTING SALARY REDUCTIONS; AND DECLARING AN EMERGENCY FOR SECTION 6 OF THIS ACT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Endowment Fund Investment Board the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2009, through June 30, 2010:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Miscellaneous Revenue Fund	\$97,500	\$36,800	\$1,000	\$135,300
Endowment Administrative Fund	<u>292,800</u>	<u>160,100</u>	<u>6,000</u>	<u>458,900</u>
TOTAL	\$390,300	\$196,900	\$7,000	\$594,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than four (4) full-time equivalent positions at any point during the period July 1, 2009, through June 30, 2010, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. The Endowment Fund Investment Board is hereby granted continuous appropriation authority for moneys in the Endowment Administrative Fund for consulting fees, bank custodial fees and portfolio-related external costs for the period July 1, 2009, through June 30, 2010.

SECTION 4. It is legislative intent that for fiscal year 2009, the Endowment Fund Investment Board transfer \$45,655,200 as follows: \$31,292,400 from the Public School Earnings Reserve Fund to the Public School Income Fund; \$850,800 from the Agricultural College Earnings Reserve Fund to the Agricultural College Income Fund; \$2,964,000 from the Charitable Institutions Earnings Reserve Fund to the Charitable Institutions Income Fund; \$2,661,600 from the Normal School Earnings Reserve Fund to the Normal School Income Fund; \$1,040,400 from the Penitentiary Earnings Reserve Fund to the Penitentiary Income Fund; \$2,984,400 from the Scientific School Earnings Reserve Fund to the Scientific School Income Fund; \$1,532,400 from the Mental Hospital Earnings Reserve Fund to the Mental Hospital Income Fund; and \$2,329,200 from the University Earnings Reserve Fund to the University Income Fund.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the Legislature to retain to the extent possible, our capable, quality employees who support the essential services and statutorily authorized programs that the citizens of Idaho expect. The Legislature finds these critical essential services to be those that maintain the health and safety of our citizens and the education of our children. While extending flexibility to the Governor and agency directors to manage the state workforce to the best of their ability during these difficult times, it remains the responsibility of the Legislature to identify priorities for the state workforce. The Legislature finds that reductions in personnel funding shall first be managed through salary reductions that impact all personnel fairly; secondly, be mitigated by the use of existing salary savings; thirdly, by using savings created by keeping newly vacated positions unfilled; fourth, by the use of furloughs; and lastly, as a last resort, by reducing the workforce. It is the intent of the Legislature that these policies shall be adhered to by the executive, legislative, and judicial branches to the extent allowed by law.

SECTION 6. SALARY REDUCTION. Inasmuch as salary reductions will save jobs; and inasmuch as a five percent (5%) reduction in personnel funding may create a reduction in force; and inasmuch as the state as a single employer of multiple departments and agencies is required by law to direct across the board salary adjustments; agencies and institutions shall reduce all salaries of classified and nonclassified employees, regardless of fund source, by three percent (3%) for fiscal year 2010, beginning on June 14, 2009, through June 12, 2010. Agencies shall use personnel cost savings, furloughs, and a reduction in force to manage the remaining two percent (2%) in funding reductions. The Division of Human Resources shall adjust all pay schedules for the classified personnel system downward to the extent that all beginning minimum salaries are three percent (3%) less than those in effect upon the date of passage of this law.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, Section 6 of this act shall be in full force and effect on and after passage and approval.

Approved April 17, 2009.

CHAPTER 183
(S.B. No. 1170)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2010; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING LEGISLATIVE INTENT ON PERSONNEL COSTS; DIRECTING SALARY REDUCTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Department of Finance the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2009, through June 30, 2010:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
State Regulatory Fund	\$3,833,200	\$1,583,800	\$53,400	\$5,470,400
Securities Investor Training Fund	<u>47,500</u>	<u> </u>	<u> </u>	<u>47,500</u>
TOTAL	\$3,880,700	\$1,583,800	\$53,400	\$5,517,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than fifty-four (54) full-time equivalent positions at any point during the period July 1, 2009, through June 30, 2010, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature to retain to the extent possible, our capable, quality employees who support the essential services and statutorily authorized programs that the citizens of Idaho expect. The Legislature finds these critical essential services to be those that maintain the health and safety of our citizens and the education of our children. While extending flexibility to the Governor and agency directors to manage the state workforce to the best of their ability during these difficult times, it remains the responsibility of the Legislature to identify priorities for the state workforce. The Legislature finds that reductions in personnel funding shall first be managed through salary reductions that impact all personnel fairly; secondly, be mitigated by the use of existing salary savings; thirdly, by using savings created by keeping newly vacated positions unfilled; fourth, by the use of furloughs; and lastly, as a last resort, by reducing the workforce. It is the intent of the Legislature that these policies shall be adhered to by the executive, legislative, and judicial branches to the extent allowed by law.

SECTION 4. SALARY REDUCTION. Inasmuch as salary reductions will save jobs; and inasmuch as a five percent (5%) reduction in personnel funding may create a reduction in force; and inasmuch as the state as a single employer of multiple departments and agencies is required by law to direct across the board salary adjustments; agencies and institutions shall reduce all salaries of classified and nonclassified employees, regardless of fund source, by three percent (3%) for fiscal year 2010, beginning on June 14, 2009, through June 12, 2010. Agencies shall use personnel cost savings, furloughs, and a reduction in force to manage the remaining two percent (2%)

in funding reductions. The Division of Human Resources shall adjust all pay schedules for the classified personnel system downward to the extent that all beginning minimum salaries are three percent (3%) less than those in effect upon the date of passage of this law.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 4 of this act shall be in full force and effect on and after passage and approval.

Approved April 17, 2009.

CHAPTER 184
(S.B. No. 1153)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE THAT CERTAIN OFFENDERS ENROLLED IN DRUG COURT SHALL BE ELIGIBLE FOR RESTRICTED NONCOMMERCIAL DRIVING PRIVILEGES UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE INFORMATION REQUIRED TO BE GIVEN TO OFFENDERS, TO PROVIDE THAT CERTAIN OFFENDERS ENROLLED IN DRUG COURT SHALL BE ELIGIBLE FOR RESTRICTED NONCOMMERCIAL DRIVING PRIVILEGES UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8004A, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8004C, IDAHO CODE, TO REVISE PENALTIES FOR EXCESSIVE ALCOHOL CONCENTRATION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PENALTIES RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR OTHER INTOXICATING SUBSTANCES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars (\$250) for refusing to take the test;

(b) His driver's license will be seized by the peace officer and a temporary permit will be issued; provided, however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or

revoked because of previous violations, and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(c) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(d) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years; and

(e) Provided however, if he is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, then he shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that he has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by him and that he has shown proof of financial responsibility; and

(f) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) above:

(a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and his driver's license or permit shall be seized by the peace officer and forwarded to the court and a temporary permit shall be issued by the peace officer which allows him to operate a motor vehicle until the date of his hearing, if a hearing is requested, but in no event for more than thirty (30) days; provided, however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(b) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the seizure unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The court, in granting such an extension, may, for good cause shown, extend the defendant's temporary driving privileges for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty immediately and suspend all the defendant's driving privileges immediately for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights;

(c) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred fifty dollar (\$250) civil penalty and suspend the defendant's driving privileges for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years,

during which time he shall have absolutely no driving privileges of any kind; and

(d) Notwithstanding the provisions of subsection (4) (b) and (c) of this section, if the defendant is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, then the defendant shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that the defendant has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the defendant and that the defendant has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the defendant successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program; and

(e) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained civil penalty or suspension of driving privileges under this section or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code: provided, that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;

(ii) Vehicular manslaughter as provided in subsections (3) (a), (b) and (c) of section 18-4006, Idaho Code;

(iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or

(iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings.

(e) The withdrawal of the blood sample may be delayed or terminated if:

(i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or

(ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(g) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will seize your driver's license and issue a notice of suspension and a temporary driving permit to you, but no peace officer will issue you a temporary driving permit if your driver's license or permit has already been and is suspended or revoked. No peace officer shall issue a temporary driving permit to a driver of a commercial vehicle who refuses to submit to or fails to complete and pass an evidentiary test;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended. The suspension will be for one (1) year if this is your first refusal. The suspension will be for two (2) years if this is your second refusal within ten (10) years. You will not be able to obtain a temporary restricted license during that period; and

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted noncommercial vehicle driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) If you become enrolled in and are a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, you shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that you have served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by you and that you have shown proof of financial responsibility; and

(f) After submitting to evidentiary testing you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

(a) What testing is required to complete evidentiary testing under this section; and

(b) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Any rules of the Idaho state police shall be in accordance with the following: a test for alcohol concentration in breath as defined in section 18-8004, Idaho Code, and subsection (1) (e) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho state police in accordance with section 18-8004, Idaho Code, at any time within ninety (90) days before the evidentiary testing. A test for alcohol concentration in blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho state police or by any laboratory approved by the Idaho state police to perform this test will be valid for the purposes of this section.

(4) Suspension.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's license, driver's permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind.

Restricted noncommercial vehicle driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection.

The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension. The notice shall be in a form provided by the department and shall state:

- (i) The reason and statutory grounds for the suspension;
- (ii) The effective date of the suspension;
- (iii) The suspension periods to which the person may be subject as provided in subsection (4) (a) of this section;
- (iv) The procedures for obtaining restricted noncommercial vehicle driving privileges;
- (v) The rights of the person to request an administrative hearing on the suspension and that if an administrative hearing is not requested within seven (7) days of service of the notice of suspension the right to contest the suspension shall be waived;
- (vi) The procedures for obtaining an administrative hearing on the suspension;
- (vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

(c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii) of this section, a person who is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the offender and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program.

(5) Service of suspension by peace officer or the department. If the driver submits to evidentiary testing after the information in subsection (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and, acting on behalf of the department, will serve the person with a notice of suspension in the form and containing the information required under subsection (4) of this section. The department may serve the person

with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4) (b) of this section.

(b) Within five (5) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, a copy of any completed temporary permit form along with any confiscated driver's license, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

- (i) The identity of the person;
- (ii) Stating the officer's legal cause to stop the person;
- (iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;
- (iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;
- (v) That the person was lawfully arrested;
- (vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4) (b) of this section.

(6) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension, and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such extension shall not operate as a stay of the

suspension and any temporary permit shall expire thirty (30) days after service of the notice of suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and any temporary permit issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

- (a) The peace officer did not have legal cause to stop the person; or
- (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
- (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. If the suspension is vacated, the person's driver's license, unless unavailable by reason of an existing suspension, revocation, cancellation, disqualification or denial shall be returned to him. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the

applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.

(9) Restricted noncommercial vehicle driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted noncommercial vehicle driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension. Restricted noncommercial vehicle driving privileges will be issued for the person to travel to and from work and for work purposes not involving operation of a commercial vehicle, to attend an alternative high school, work on a GED, for postsecondary education, or to meet the medical needs of the person or his family if the person is eligible for restricted noncommercial vehicle driving privileges. Any person whose driving privileges are suspended under the provisions of this chapter may be granted privileges to drive a noncommercial vehicle but shall not be granted privileges to operate a commercial motor vehicle.

(10) Rules. The department may adopt rules under the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this section.

SECTION 3. That Section 18-8004A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004A. PENALTIES -- PERSONS UNDER 21 WITH LESS THAN 0.08 ALCOHOL CONCENTRATION. (1) Any person found guilty of a violation of subsection (1) (d) of section 18-8004, Idaho Code, shall be guilty of a misdemeanor; and, for a first offense:

(a) Shall be fined an amount not to exceed one thousand dollars (\$1,000);

(b) Shall have his driving privileges suspended by the court for a period of one (1) year, ninety (90) days of which shall not be reduced and during which period absolutely no driving privileges of any kind may be granted. After the period of absolute suspension of driving privileges has passed, the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court;

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for any subsequent violation of the provisions of this section or any violation of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall be required to undergo an alcohol evaluation and otherwise comply with the requirements of sections ~~18-8005(911)~~ and ~~18-8005(124)~~, Idaho Code, as ordered by the court.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1) (d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1) (a), (b), (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, as defined in section 18-8005(~~810~~), Idaho Code, notwithstanding the form of the judgment or withheld judgment, is guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of five (5) days, as required by 23 U.S.C. section 164, not to exceed thirty (30) days;

(b) Shall be fined an amount of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000);

(c) Shall have his driving privileges suspended by the court for a period not to exceed two (2) years, one (1) year of which shall be absolute and shall not be reduced and during which period absolutely no driving privileges of any kind may be granted;

(d) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; ~~and~~

(e) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of this section or section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(f) Shall undergo an alcohol evaluation and comply with the other requirements of subsections (~~911~~) and (~~124~~) of section 18-8005, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1) (d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1) (a), (b), (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, within five (5) years, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of ten (10) days, as required by 23 U.S.C. section 164, not to exceed six (6) months;

(b) Shall be fined an amount of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000);

(c) Shall surrender his driver's license or permit to the court;

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year, during which period absolutely no driving privileges of any kind may be granted, or until such person reaches the age of twenty-one (21) years, whichever is greater; ~~and~~

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; and

(f) Shall undergo an alcohol evaluation and comply with all other requirements imposed by the court pursuant to sections 18-8005(~~911~~) and ~~18-8005(124)~~, Idaho Code.

(4) All provisions of section 18-8005, Idaho Code, not otherwise in conflict with or provided for in this section shall apply to any sentencing imposed under the provisions of this section.

(5) A person violating the provisions of section 18-8004(1) (d), Idaho Code, may be prosecuted under title 20, Idaho Code.

(6) Any person whose driving privileges are suspended, revoked, canceled or disqualified under the provisions of this chapter shall not be granted privileges to operate a commercial motor vehicle during the period of suspension, revocation, cancellation or disqualification.

SECTION 4. That Section 18-8004C, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004C. EXCESSIVE ALCOHOL CONCENTRATION -- PENALTIES. Notwithstanding any provision of section 18-8005, Idaho Code, to the contrary:

(1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (a), Idaho Code, for the first time, but who has an alcohol concentration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, shall be guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year;

(b) May be fined an amount not to exceed two thousand dollars (\$2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of this section and violations of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, Idaho Code, and who has an alcohol concentration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, and who previously has been found guilty of or has pled guilty to one (1) or more violations of section 18-8004, Idaho Code, in which the person had an alcohol concentration of 0.20 or more, or any substantially conforming foreign criminal violation wherein the defendant had an alcohol concentration of 0.20 or more, or any combination thereof, within five (5) years, notwithstanding the form of judgment or withheld judgment shall be guilty of a felony; and:

(a) Shall be sentenced to the custody of the state board of correction for not to exceed five (5) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars (\$5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory license suspension period.

(3) Notwithstanding the provisions of subsections (1) (e) and (2) (d) of this section, a person who is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or

operated, or both, by the offender, and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program.

(4) All the provisions of section 18-8005, Idaho Code, not in conflict with or otherwise provided for in this section, shall apply to this section.

(45) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

SECTION 5. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (a) ~~or (5)~~, Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

- (a) May be sentenced to jail for a term not to exceed six (6) months;
- (b) May be fined an amount not to exceed one thousand dollars (\$1,000);
- (c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and
- (d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

- (a) The provisions of section 18-8005(1) (a), (b) and (c), Idaho Code; and
- (b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

- (a) The provisions of section 18-8005(1) (a), (b) and (c), Idaho Code; and
- (b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as pro-

vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and five (5) days of which must be served in jail, as required by 23 U.S.C. section 164, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed two thousand dollars (\$2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the one (1) year mandatory license suspension period.

(~~5~~5) If the person has pled guilty or was found guilty for the second time within ten (10) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(56) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed ten (10) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which must be served in jail, as required by 23 U.S.C. section 164; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars (\$5,000);

(c) Shall surrender his driver's license or permit to the court; ~~and~~

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period.

(67) Notwithstanding the provisions of subsections (4) (e) and (6) (d) of this section, any person who is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the offender and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program.

(8) For the purpose of computation of the enhancement period in subsections (4), (56) and (79) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(79) Notwithstanding the provisions of subsections (4) and (56) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, a violation of the provisions of section 18-4006 3. (b), Idaho Code, or any substantially conforming foreign criminal felony violation, and within fifteen (15) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (56) of this section.

(810) For the purpose of subsections (4), (56) and (79) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(911) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare; provided however, if the defendant has no prior or pending charges with respect to the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the records and information required under subsections (102) (a), (b) and (c) of this section or possesses information from other reliable sources relating to the defendant's use or nonuse of alcohol or drugs which does not give the court any reason to believe that the defendant regularly abuses alcohol or drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of section 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of an alcohol

evaluation with respect to a defendant's violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or other assessment which evaluates the defendant's degree of alcohol abuse and need for alcohol treatment conducted within twelve (12) months preceding the date of the defendant's sentencing. In the event an alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(102) At the time of sentencing, the court shall be provided with the following information:

- (a) The results, if administered, of any evidentiary test for alcohol and/or drugs;
- (b) A computer or teletype or other acceptable copy of the person's driving record;
- (c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and
- (d) The alcohol evaluation required in subsection (911) of this section, if any.

(113) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(124) In the event that the alcohol evaluation required in subsection (911) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program

set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(135) Any person who is disqualified, or whose driving privileges have been suspended, revoked or canceled under the provisions of this chapter, shall not be granted restricted driving privileges to operate a commercial motor vehicle.

Approved April 17, 2009.

CHAPTER 185
(S.B. No. 1154)

AN ACT

RELATING TO FISCAL AFFAIRS OF SCHOOL DISTRICTS; AMENDING SECTION 33-5303, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO DELETE REFERENCE TO MAXIMUM LIMITS OF STATE SCHOOL BOND GUARANTEES; AMENDING SECTION 33-5304, IDAHO CODE, TO PROVIDE FOR APPLICATIONS, TO REQUIRE CERTAIN VOTER APPROVAL PRIOR TO APPLICATION, TO PROVIDE FOR FEES, TO PROVIDE FOR THE IDAHO SCHOOL BOND GUARANTY ADMINISTRATIVE FUND, TO PROVIDE A PROCESS RELATING TO THE DETERMINATION OF WHETHER A GUARANTY WILL BE MADE, TO PROVIDE FOR CERTIFICATES OF ELIGIBILITY AND TO PROVIDE FOR THE FOREGOING OF GUARANTIES BY SCHOOL DISTRICTS; AMENDING SECTION 33-5305, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE MONITORING OF FISCAL SOLVENCY OF SCHOOL DISTRICTS, TO REVISE PROVISIONS RELATING TO INELIGIBILITY FOR FUTURE GUARANTIES AND TO REVISE PROVISIONS RELATING TO APPLICABILITY; AMENDING SECTION 33-5307, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE INTERCEPTION OF CERTAIN PAYMENTS, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR THE IMPOSITION OF CERTAIN PENALTIES ON SCHOOL DISTRICTS AND TO PROVIDE THAT CERTAIN ACTION MAY NOT BE TAKEN BY SCHOOL DISTRICTS THAT WOULD INCREASE THE RISK THAT THE STATE'S GUARANTY WOULD BE CALLED UPON AN ADDITIONAL TIME; AMENDING SECTION 33-5310, IDAHO CODE, TO PROVIDE THAT CERTAIN SCHOOL DISTRICTS MAY SEEK SPECIFIED CREDIT ENHANCEMENT; AMENDING SECTION 57-728, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS, TO PROVIDE FOR RULEMAKING, TO REVISE AND TO PROVIDE A PROCESS FOR THE PARTICIPATION OF SCHOOL DISTRICTS IN THE CREDIT ENHANCEMENT PROGRAM, TO PROVIDE A PROCESS IN THE EVENT MONEYS ARE INSUFFICIENT TO PAY A DEBT SERVICE PAYMENT, TO REVISE AND TO PROVIDE TERMS AND CONDITIONS FOR CERTAIN NOTES, TO PROVIDE THAT THE BOARD SHALL MAKE AVAILABLE A SPECIFIED SUM FROM THE PUBLIC SCHOOL ENDOWMENT FUND FOR PURCHASING SPECIFIED NOTES, TO CLARIFY THE AMOUNT IN NOTES THE BOARD IS REQUIRED TO HOLD, TO PROVIDE A LIMITATION ON THE PRINCIPAL AMOUNT OF BONDS GUARANTEED BY THE CREDIT ENHANCEMENT PROGRAM AND TO PROVIDE A MAXIMUM LIMIT OF BONDS THAT MAY BE GUARANTEED BY THE CREDIT ENHANCEMENT PROGRAM; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-5303, Idaho Code, be, and the same is hereby amended to read as follows:

33-5303. STATE'S ~~GUARANTEE~~ GUARANTY -- MONITORING OF FINANCIAL SOLVENCY CONTRACT WITH BONDHOLDERS -- ~~GUARANTEE~~ GUARANTY -- LIMITATION AS TO CERTAIN REFUNDED BONDS.

(1) (a) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(b) Notwithstanding subsection (1) (a) of this section, nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each school district may refer to this pledge and undertaking by the state in its bonds.

(2) (a) The sales tax of the state is pledged to guarantee full and timely payment of the principal of, either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment, and interest on, refunding bonds issued on and after March 1, 1999, for voter approved bonds which were voted on by the electorate prior to March 1, 1999, and voter approved bonds which were voted on by the electorate on and after March 1, 1999, as such payments shall become due, except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.

(3) (a) Any bond guaranteed under this chapter that is refunded and considered paid for, no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.

(b) Any refunding bond issued by a ~~board~~ school district that is itself secured by government obligations until the proceeds are applied to pay refunded bonds is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations.

(4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

~~(5) On and after July 1, 2007, state school bond guarantees issued by the state of Idaho shall not exceed twenty million dollars (\$20,000,000) in the aggregate per school district. Notwithstanding this maximum limit, bond guarantees exceeding the twenty million dollar (\$20,000,000) limit prior to July 1, 2007, shall remain in effect. In the event school districts consolidate, the maximum state bond guarantee of the newly consolidated school district shall be the sum of the maximum limit of each school district participating in the consolidation. This new maximum limit shall also apply to bonds issued by the consolidated district after July 1, 2007.~~

SECTION 2. That Section 33-5304, Idaho Code, be, and the same is hereby amended to read as follows:

33-5304. PROGRAM ELIGIBILITY -- OPTION TO FOREGO GUARANTY.

(1) (a) Any school district through its board of trustees or its superintendent may ~~request that~~ apply to the state treasurer ~~issue a certificate evidencing eligibility~~ for the state's guaranty of its eligible bonds under this chapter. Where voter approval of a bond issuance is required by law, the school district must have such voter approval prior to its application for the state's guaranty.

(b) The state treasurer may charge the school district an application fee equal to the greater of the estimated costs to the state treasurer to process the application or five hundred dollars (\$500), which shall be payable at the time the school district applies for a guaranty under this chapter. The state treasurer may charge a transaction fee of not more than five one-hundredths of one percent (.05%) of the total principal and interest payable on the school district's bonds. Such transaction fee shall be payable to the state treasurer at the time the school district issues the bonds guaranteed under this chapter and the application fee paid by the school district shall be credited against such transaction fee.

(c) There is hereby created in the state treasury the "Idaho School Bond Guaranty Administrative Fund" which shall be credited:

(i) Fees collected pursuant to this section;

(ii) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and

(iii) All other moneys as may be provided by law.

Moneys in the fund shall be continuously appropriated to the state treasurer, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund. Moneys in the fund shall be used to defray costs associated with the implementation, administration, and oversight of the Idaho school bond guaranty act.

(d) The state superintendent of public instruction shall provide an analysis of an applicant school district's fiscal solvency upon the request of the state treasurer.

(e) After reviewing the request, the analysis of the superintendent of public instruction, the reports submitted by the school district pursuant to section 33-5305, Idaho Code, and other information available to the state treasurer, the state treasurer shall determine in good faith whether or not the financial affairs and condition of a school district are such that it would be imprudent for the state to guarantee the bonds of that school district. The state treasurer shall also determine in good faith whether the guarantee of the bonds of the school district will adversely impact the credit rating of the state of Idaho or other financing programs benefiting the state of Idaho.

(f) ~~After reviewing the request, if~~ Unless the state treasurer ~~determines finds~~ finds that the ~~board is eligible~~ criteria set forth in subsection (1) (e) of this section prevents the issuance of a certificate of eligibility, the state treasurer shall promptly issue ~~the a~~ a certificate of eligibility and provide it to the requesting ~~board~~ school district.

(eg) (i) The school district receiving the certificate and all other persons may rely on the certificate as evidencing eligibility for the guaranty for one (1) year from and after the date of the certificate, without making further inquiry of the state treasurer during the year. The certificate of eligibility shall state that the ~~guarantee~~ guaranty is good for the life of the bond. This ~~guarantee~~ guaranty shall be printed on all bonds guaranteed pursuant to this chapter or shall be an addendum attached to all bonds guaranteed pursuant to this chapter.

(ii) The certificate of eligibility is valid for the life of the bond, even if the state treasurer later determines that the school district is ineligible for future guaranties. ~~If the state trea-~~

~~surer later determines that the school district is ineligible, the treasurer shall publish a twenty (20) days' notice as provided in section 60-109, Idaho Code, in a newspaper of general circulation in the county of the school district and in a newspaper in the county where the state capitol is located regarding the ineligibility. Additionally, the treasurer shall notify the underwriter of the bonds and the bond counsel of its office's finding. The underwriter and the bond counsel shall make a good faith effort to notify holders of the bonds of the treasurer's determination.~~

(2) Any board school district that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any school district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter may not issue any additional bonds guaranteed by this act until:

(a) All payment obligations of the school district to the state under the default avoidance program are satisfied; and

(b) The state treasurer certifies in writing, to be kept on file by the state treasurer, that the school district is fiscally solvent.

(4) Bonds not guaranteed by this chapter are not included in the definition of "bond" in section 33-5302, Idaho Code, as used generally in this chapter, are not subject to the requirements of and do not receive the benefits of this chapter.

SECTION 3. That Section 33-5305, Idaho Code, be, and the same is hereby amended to read as follows:

33-5305. STATE ~~TREASURER~~ TO MONITOR FISCAL SOLVENCY OF SCHOOL DISTRICTS -- DUTIES OF STATE TREASURER AND ~~ATTORNEY GENERAL~~ STATE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) The state treasurer shall:

~~(a) Monitor the financial affairs and condition of each school district in the state to evaluate each school district's financial solvency; Receive the following from each school district applying for the state's guaranty under this chapter and each school district receiving the state's guaranty under this chapter:~~

~~(i) A copy of the annual statement of financial condition and report required in section 33-701, Idaho Code; and~~

~~(ii) A copy of the complete audit of the financial statements of the school district prepared pursuant to section 33-701, Idaho Code.~~

~~(b) At least annually, report his conclusions concerning the fiscal solvency of school districts receiving a guaranty under this chapter to the governor, the legislature, the endowment fund investment board and the state superintendent of public instruction; and~~

~~(c) Report immediately to the governor, the endowment fund investment board and the state superintendent of public instruction any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.~~

~~(2) The state superintendent of public instruction shall provide an analysis of a school district's current fiscal solvency upon the request of the state treasurer.~~

~~(3) (a) After examining the report analysis of the school district state superintendent of public instruction and other information available to the state treasurer, the state treasurer shall determine whether or not the financial affairs and condition of a board school district are such that it would be imprudent for the state to guarantee the future bonds of that school district.~~

~~(b) If the state treasurer determines that the state should not guarantee the bonds of that board school district, the state treasurer shall:~~

(i) Prepare a determination of ineligibility for future guaranties; and

(ii) Keep it on file in the office of the state treasurer, ~~and~~

~~(iii) Make the necessary advertisements and notifications as provided in section 33-5304, Idaho Code.~~

(c) The state treasurer may remove a school district from the status of ineligibility for future guaranties when a subsequent report of the school district or other information made available to the state treasurer evidences that it is no longer imprudent for the state to guarantee the bonds of that ~~board~~ school district.

~~(34)~~ Nothing in this section affects the state's guaranty of bonds of a ~~board~~ school district issued:

(a) Before determination of ineligibility for future guaranties;

(b) After the eligibility for future guaranties of the ~~board~~ school district is restored; or

(c) Under a certificate of eligibility issued under this chapter.

SECTION 4. That Section 33-5307, Idaho Code, be, and the same is hereby amended to read as follows:

33-5307. STATE FINANCIAL ASSISTANCE INTERCEPT MECHANISM -- DUTIES OF STATE TREASURER ~~DUTIES~~ AND ATTORNEY GENERAL -- INTEREST AND PENALTY PROVISIONS.

(1) (a) If one (1) or more payments on bonds are made by the state treasurer as provided in this chapter, the state treasurer shall:

(i) Immediately intercept any payments ~~from the public school permanent endowment fund or from any other~~ source of operating moneys provided by the state to the ~~board~~ school district that issued the bonds that would otherwise be paid to the ~~board~~ school district by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the ~~board~~ school district to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the school district or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(2) The school district that issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus one percent (1%); and

(c) Pay all penalties required by this chapter.

(3) (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the school district on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the ~~board~~ school district to make payment on its bonds in a timely manner, impose on the ~~board~~ school district a penalty of not more than five percent (5%) of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4) (a) (i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a school district's scheduled

debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the school district and its board to compel it to:

1. Levy and provide tax revenues to pay debt service on its bonds when due; and
2. Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a school district.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The school district shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5) (a) Except as provided in paragraph (c) of this subsection, any school district whose operating funds were intercepted under this section may replace those funds from other school district moneys or from property taxes, subject to the limitations provided in this subsection.

(b) A school district may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

- (i) Taxes originally levied to make the payment but which were not timely received by the school district;
- (ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;
- (iii) Moneys transferred from the undistributed reserve, if any, of the school district; or
- (iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a school district may not replace operating funds intercepted by the state with moneys collected and held to make payments on bonds if that replacement would divert moneys from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon ~~a second~~ an additional time.

SECTION 5. That Section 33-5310, Idaho Code, be, and the same is hereby amended to read as follows:

33-5310. ~~WHEN CREDIT ENHANCEMENT PROGRAM TAKES EFFECT. The credit enhancement program for school district bonds and loans pursuant thereto as provided in section 57-728, Idaho Code, shall take effect if the state treasurer certifies that moneys from the sales tax account or from the provisions of this chapter are insufficient to pay the principal of and interest on the general obligation notes issued pursuant to section 33-5308, Idaho Code, and due and payable, and so notifies the endowment fund investment board in writing. If approved to participate in the Idaho school bond guaranty program established in this chapter, a school district may also seek credit enhancement, as authorized pursuant to section 57-728, Idaho Code, by applying therefor pursuant to section 57-728(3), Idaho Code.~~

SECTION 6. That Section 57-728, Idaho Code, be, and the same is hereby amended to read as follows:

57-728. CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICT BONDS. (1) The endowment fund investment board shall administer a school district bond credit enhancement program in accordance with this section and in conjunction with chapter 53, title 33, Idaho Code, ~~and may promulgate rules to implement it.~~ This program applies to voter approved bonds issued by school districts. The program is intended to benefit school districts by ~~purchasing~~ authorizing the board to purchase notes issued by the state of

~~Idaho, whereby the state may guarantee payment of school district bonded indebtedness in order to avoid an imminent default, providing lower interest rates at which the bonds may be issued for the purpose of making debt service payments under the Idaho school bond guaranty program established in chapter 53, title 33, Idaho Code.~~

(2) The board shall promulgate rules to implement the program. Rules may include the imposition of guaranty and administrative fees upon school districts participating in the program. Rules shall include:

(a) The application materials school districts must provide to the board; and

(b) The application procedures, submission deadlines, and the time periods for review and approval or denial of an application.

(3) A school district that seeks ~~the guarantee of bonds~~ credit enhancement under this program shall first apply to the state treasurer pursuant to participate in the Idaho school bond guaranty program established in chapter 53, title 33, Idaho Code. If approved to participate in the Idaho school bond guaranty program, a school district may apply for credit enhancement, as provided in section 33-530410, Idaho Code. ~~The state treasurer shall transmit all approved applications to the board. The board may challenge an approved application within three (3) business days of their receipt of the same. If no challenge is issued within three (3) business days the application shall be deemed approved by the board. In the event of a challenge in writing to the state treasurer, the treasurer and the board shall have ten (10) business days to mutually approve the application. If after a challenge by the board, the application is not mutually approved within the ten (10) business days, the application shall be deemed rejected. The board shall approve or deny applications as set forth in rule but not longer than twenty (20) days following the submission of a complete application to the board. Nothing contained herein shall prohibit a school district from reapplying following a rejected application.~~

(34) Upon approval of a school district's application to participate in the credit enhancement program under this section, the following shall be in effect in the event moneys from the sales tax account or from the provisions of section 33-5309, Idaho Code, are insufficient to pay the principal of and interest on the notes issued by the state pursuant to section 33-5308, Idaho Code, the endowment fund shall purchase new notes from the state, in accordance with section 33-5308, Idaho Code, the proceeds of which shall be sufficient to pay the principal of and the interest on the original notes as they become due pursuant to section 33-5308, Idaho Code. ~~The new notes shall be subject to the following terms and conditions:~~ a debt service payment under the Idaho school bond guaranty program:

(a) The board may purchase on behalf of the public school endowment fund, or from other funds administered by the board, notes from the state issued by the state treasurer, in accordance with section 33-5308, Idaho Code, under such terms as are negotiated between the board and the state treasurer; or

(b) Upon the request of the state treasurer pursuant to section 33-5308, Idaho Code, the board shall purchase on behalf of the public school endowment fund notes issued by the state treasurer, the proceeds of which shall be sufficient to pay the debt service payments as they become due.

(5) Notes purchased by the board pursuant to subsection (4) (b) of this section shall be subject to the following terms and conditions:

(a) The notes shall bear interest at a rate equal to ~~an~~ the annual rate ~~ten percent (10%) higher than the average interest earned on the investments of the public school permanent endowment fund in the four (4) calendar quarters preceding the quarter in which the loan occurred and if this figure is not equal to the percentage return of the fund's highest category of investments in its portfolio, then the interest rate shall~~

~~equal that percentage return on investment, plus all additional administrative costs related to these investments of one (1) year treasury bills, as published by the federal reserve board as of the date of the request of the state treasurer, plus four hundred (400) basis points, plus, for the first six (6) months of the term of the note, an amount, as determined by the board, up to a maximum of fifty (50) basis points, to cover all additional administrative and transaction costs related to the purchase of the notes;~~

(b) The notes will have a maximum term of one (1) year, and may be renewed at the request of the state treasurer;

(c) The notes, including principal and interest, shall be repaid from the school district's next payments pursuant to ~~chapter 8, title 33 section 33-5307~~, Idaho Code, as collected by the state treasurer;

(~~ed~~) The state may make additional payments on the note;

(~~de~~) The ~~endowment fund investment~~ board may require the state treasurer to compel the school district to modify its fiscal practices and its general operations if the board determines that there is a substantial likelihood that the school district will not be able to make future payments required under this section.

(~~46~~) The provisions of this section shall not be deemed to interfere with the state treasurer's ability in chapter 53, title 33, Idaho Code, to obtain repayment of a delinquent obligation.

(~~57~~) For purposes of administering the provisions of this section, the board shall make available the sum of ~~at least~~ two hundred million dollars (\$200,000,000) from the public school ~~permanent~~ endowment fund, for purposes of purchasing notes as authorized by this section. Nothing in this section shall require the board to hold at any time in excess of two hundred million dollars (\$200,000,000) in notes issued pursuant to the credit enhancement program. The principal amount of ~~debt~~ bonds guaranteed by the credit enhancement program shall not be greater than four (4) times the amount made available by the board from the public school permanent endowment fund for the purpose of purchasing notes.

(8) On and after the effective date of this section, the aggregate principal amount of school district bonds outstanding that may be guaranteed by the credit enhancement program shall not exceed twenty million dollars (\$20,000,000) per school district. Notwithstanding this maximum limit, credit enhancement of bond guaranties for bonds issued prior to July 1, 2007, exceeding the twenty million dollar (\$20,000,000) maximum limit shall remain in effect. In the event school districts consolidate, the maximum credit enhancement of the bonds of the newly consolidated school district shall be the sum of the maximum limit of each school district participating in the consolidation. The state treasurer shall monitor the principal amounts of each school district participating in the credit enhancement program and provide such information to the board.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 17, 2009.

CHAPTER 186
(S.B. No. 1015)

AN ACT

RELATING TO FISH AND GAME; AMENDING CHAPTER 1, TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 36-116, IDAHO CODE, TO REQUIRE THE DEPARTMENT OF FISH AND GAME TO MAKE CONTACT WITH CERTAIN AGENCIES OF OTHER STATES FOR THE PURPOSE OF SOLICITING THE TRANSFER OF WOLVES, TO PROVIDE FOR ASSOCIATED COSTS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 36, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 36-116, Idaho Code, and to read as follows:

36-116. WOLVES -- SOLICITATION FOR TRANSFER. Within thirty (30) days from the effective date of this act, the Idaho department of fish and game shall contact, in writing, all state agencies within the United States with comparable powers and duties as those vested in the department, soliciting interest in the transfer of wolves from Idaho to such agency. In the event an agency of another state requests such transfer, it shall pay to the state of Idaho an amount as determined by the department to cover costs associated with capture, transportation and any other associated administrative expenses.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 17, 2009.

CHAPTER 187
(S.B. No. 1020, As Amended)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1304, IDAHO CODE, TO PROHIBIT CERTAIN PERSONS FROM PURCHASING UNLAWFULLY TAKEN WILDLIFE OR ANY PORTION THEREOF SUBJECT TO SALE BY THE DIRECTOR OF THE DEPARTMENT OF FISH AND GAME AND TO PROVIDE FOR VIOLATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-1304, Idaho Code, be, and the same is hereby amended to read as follows:

36-1304. SEIZURE OF EQUIPMENT AND WILDLIFE. (a) Seizure of Evidence -- Confiscation of Unlawfully Used Equipment. The director and all other officers empowered to enforce fish and game laws are hereby authorized at any time to seize and hold as evidence any powder, explosives, lime, toxicants, drugs, spears, traps, snares, guns, tackle, nets, seines or any other hunting, trapping or fishing equipment or devices used in the commission of a violation of any provisions of this title or rules or proclamations promulgated pursuant thereto, provided that all lawful traps, guns, spears, tackle, nets and seines taken from the possession of any person arrested for a violation of this title and held as evidence in any prosecution resulting from such arrest shall not be subject to confiscation but the same shall be

returned to the person from whom taken when no longer needed as evidence. Provided, however, if it appears from the evidence before the magistrate hearing the case that the powder, explosive, lime, toxicants, drugs, or other unlawful means and devices were used or were about to be used for the unlawful taking or killing of wildlife, said magistrate shall order the same confiscated and sold by the director at public sale, the proceeds therefrom turned into the fish and game account. Any guns, fishing tackle, nets, traps or other equipment used in the taking of wildlife unlawfully and for which no lawful owner can be determined or any such equipment seized as evidence in a case and for which an owner is known, if not claimed within six (6) months following the final disposition of the case in question, shall be deemed to be the property of the fish and game department; provided, that this shall not occur unless written notice is given to the lawful owner, when known, by registered mail to his last known address within thirty (30) days after the final disposition of the case. Equipment so obtained may be sold by the department unless it would be unlawful for the general public to own or possess such equipment. Any proceeds from the sale of such equipment that would be lawful for the general public to own or possess, shall be deposited in the fish and game account.

(b) Unlawfully Taken Wildlife -- Seizure, Confiscation, Disposition.

(i) The director or any other officer empowered to enforce the fish and game laws may at any time seize and take into his custody any wildlife or any portion thereof which may have been taken unlawfully, or which may be unlawfully in the possession of any person. If it appears from the evidence before the magistrate hearing the case that said wildlife was unlawfully taken, the magistrate shall:

1. Order the same confiscated or sold by the director and the proceeds deposited in the fish and game account; or
2. In his discretion, order such confiscated wildlife given to a designated tax-supported, nonprofit or charitable institution or indigent person.

(ii) Any person having unlawfully taken wildlife that is the subject of a sale by the director shall be prohibited from purchasing the unlawfully taken wildlife or any portion thereof. Provided further, no person shall knowingly purchase unlawfully taken wildlife or any portion thereof on behalf of any person who has unlawfully taken the wildlife that is the subject of the sale. Any violation of this subsection (b)(ii) shall be considered an illegal purchase or offer to purchase wildlife, or parts thereof, which has been unlawfully killed or taken.

(c) Unclaimed Wildlife -- Seizure, Disposition. All carcasses, hides, pelts or portions of any wildlife protected by the provisions of this title which are deemed to be unclaimed or abandoned may be seized by the director or any other officer empowered to enforce game laws and, upon being so seized, the director shall:

1. Sell same at public or private sale and deposit the proceeds therefrom in the fish and game account.
2. In his discretion, order such wildlife to be given to a designated tax-supported nonprofit or charitable institution or indigent person.

(d) Receipt Required. A written receipt must be executed for all equipment or wildlife disposed of in accordance with the provisions of this section.

Approved April 17, 2009.

CHAPTER 188
(S.B. No. 1022)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1407, IDAHO CODE, TO REVISE PROCESSING FEE PROVISIONS RELATING TO CERTAIN FISH AND GAME VIOLATORS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-1407, Idaho Code, be, and the same is hereby amended to read as follows:

36-1407. PROCESSING FEE IMPOSED ON VIOLATORS. (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty, or is convicted of or received a withheld judgment for the illegal killing or the illegal possession or illegal waste of game animals shall be assessed a processing fee as follows:

- (1) Moose or elk, ~~one two hundred seventy-five~~ fifty dollars (\$~~175~~250) per animal killed, possessed or wasted.
- (2) Deer, pronghorn antelope, ~~fifty~~ seventy-five dollars (\$~~50~~75.00) per animal killed, possessed or wasted.
- (3) Bighorn sheep, caribou, mountain goat and black bear, ~~seventy-five~~ one hundred twenty-five dollars (\$~~75~~125.00) per animal killed, possessed or wasted.

(b) In every case of a plea of guilty, a finding of guilt, a conviction or a withheld judgment, the court before whom such plea of guilty, finding of guilt or conviction is obtained or who enters a withheld judgment shall enter judgment ordering the defendant to pay the state in a sum or sums as hereinbefore set forth including post-judgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, such judgment shall be declared against them jointly and severally.

(c) The judgment shall fix the manner and the time of payment. A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(d) All courts ordering such judgments of processing fees shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game set-aside account. These fees shall be available for the processing of the meat of moose, elk, deer, pronghorn antelope, bighorn sheep, caribou, mountain goat and black bear which have been illegally taken, accidentally killed, taken as a result of depredation problems or donated by sportsmen. The processed meat thereof shall be distributed by charitable organizations free to needy Idaho residents or utilized by charitable organizations.

Approved April 17, 2009.

CHAPTER 189
(S.B. No. 1108, As Amended)

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES; AMENDING SECTION 56-1011, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 56-1012, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES, TO REMOVE DEFINITIONS,

TO REVISE DEFINITIONS, TO DEFINE NEW TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 56-1013, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-1013A, IDAHO CODE, TO CORRECT REFERENCE TO THE BOARD OF HEALTH AND WELFARE, TO PROVIDE FOR CONTINUOUS APPROPRIATION OF INITIAL APPLICATION FEE, TO PROVIDE A CORRECT CODE REFERENCE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-1014, IDAHO CODE, TO REVISE DUTIES, TO PROVIDE CORRECT CODE REFERENCES AND TO REVISE TERMINOLOGY; AMENDING SECTION 56-1015, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO REVISE TERMINOLOGY; AMENDING SECTION 56-1016, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE STANDARDS FOR AIR MEDICAL SERVICE, TO REVISE AGENCY MINIMUM STANDARDS, TO PROVIDE FOR NONTRANSPORT SERVICE MINIMUM STANDARDS WAIVER, TO REQUIRE APPLICANTS TO SUBMIT CERTAIN INFORMATION AND AGREE TO MEET CERTAIN REQUIREMENTS, TO PROVIDE THAT THE EMS BUREAU PROVIDE CERTAIN NOTICE TO CERTAIN ENTITIES, TO PROVIDE CERTAIN LIMITATIONS ON THE USE OF CERTAIN DATA, TO PROVIDE FOR LICENSE DENIAL APPEAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 56-1020, 56-1021 AND 56-1022, IDAHO CODE, TO PROVIDE PENALTIES FOR PERSONNEL LICENSE VIOLATIONS, TO PROVIDE PENALTIES FOR AGENCY LICENSE VIOLATIONS, TO PROVIDE FOR PERSONNEL AND AGENCY LICENSURE ACTION, TO PROVIDE GROUNDS AND TO PROVIDE PROCEDURE; AMENDING SECTION 56-1017, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE BOARD RULEMAKING AUTHORITY, TO REVISE EMS BUREAU GUIDELINE RESPONSIBILITY, TO PROVIDE A CORRECT CODE REFERENCE AND TO REVISE TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 56-1011, Idaho Code, be, and the same is hereby amended to read as follows:

56-1011. EMERGENCY MEDICAL SERVICES -- STATEMENT OF INTENT. It is the purpose of the legislature of the state of Idaho in the adoption of sections 56-1011 through 56-1018B23, Idaho Code, to recognize the importance of the delivery of emergency medical services and to provide reasonable regulation of the same. For this purpose, the provisions of section 54-1803, Idaho Code, shall not be so construed as to prohibit or penalize emergency medical services rendered by a person authorized to render emergency medical services by sections 56-1011 through 56-1018B23, Idaho Code, if such emergency medical service is rendered under the responsible supervision and control of a licensed physician.

SECTION 2. That Section 56-1012, Idaho Code, be, and the same is hereby amended to read as follows:

56-1012. DEFINITIONS. As used in sections 56-1011 through 56-1018B23, Idaho Code:

(1) "Advanced emergency medical technician" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(2) "Agency" means any organization licensed by the EMS bureau that operates an air medical service, ambulance service or nontransport service.

(3) "Air ambulance" means any privately or publicly owned fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with sections

56-1011 through 56-1023, Idaho Code, and specifications established by board rule.

(4) "Air medical service" means an agency licensed by the EMS bureau that responds to requests for patient care and transportation from hospitals and EMS agencies using a fixed wing aircraft or rotary wing aircraft.

(5) "Ambulance" means any privately or publicly owned ground motor vehicle, or nautical vessel, ~~fixed wing aircraft or rotary wing aircraft~~ used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with sections 56-1011 through 56-1018B23, Idaho Code, and specifications established by the board of health and welfare rule.

(6) "Ambulance service" means an agency licensed by the EMS bureau operated with the intent to provide personnel and equipment for medical treatment at an emergency scene, during transportation or during transfer of persons experiencing physiological or psychological illness or injury who may need medical attention during transport.

(7) "Applicant" means any organization that is requesting an agency license under this chapter and includes the following:

(a) An organization seeking a new license;

(b) An existing agency that intends to change the level of licensed personnel it utilizes;

(c) An existing agency that intends to change its geographic coverage area, except by agency annexation;

(d) An existing nontransport service that intends to provide ambulance service;

(e) An existing ambulance service that intends to discontinue transport and become a nontransport service.

(28) "Board of Health and Welfare" means the Idaho board of health and welfare.

~~(3) "Certified Personnel" means individuals who have completed training and successfully passed examinations for training and skills proficiency in one (1) or several levels as certified by the department of health and welfare. These several levels of certified personnel shall include:~~

~~(a) FR — "First Responder" (hereafter FR) means an individual certified by the EMS bureau of the Idaho department of health and welfare as an FR on the basis of successful completion of an FR course approved by the board of health and welfare and subsequent required continuing training.~~

~~(b) EMT-B — "Emergency Medical Technician-Basic" (hereafter EMT-B) means an individual certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of an EMT-B course approved by the board of health and welfare and subsequent required continuing training.~~

~~(c) "Ambulance Rating" means a certification issued by the EMS bureau of the Idaho department of health and welfare to an EMT-B on the basis of successful completion of supervised in-field ambulance experience as defined by the board of health and welfare.~~

~~(d) "Advanced Emergency Medical Technician-Ambulance" (hereafter advanced EMT-A) means a person who:~~

~~(i) Is certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of EMT-A training and in addition, has completed advanced training in such techniques as intravenous fluid therapy, airway management, and subsequent required continued training; and~~

~~(ii) Has received additional training under the supervision of a licensed physician.~~

- ~~(A) To administer drugs under written or oral authorization of a licensed physician; and~~
- ~~(B) To perform such other acts under written or oral authorization of a licensed physician as shall be defined by the commission; and~~
- ~~(iii) Has been examined and certified as an advanced EMT-A by an authorized representative of the department.~~
- ~~(e) "Emergency Medical Technician Intermediate" (hereafter EMT-I) means a person who:~~
- ~~(i) Has completed all the requirements for certification as an EMT-I; and~~
- ~~(ii) Has successfully completed a course in patient care including the required training under the supervision of a licensed physician covering the scope of practice defined by the commission; and~~
- ~~(iii) Has been examined and certified as an EMT-I by an authorized representative of the department.~~
- ~~(f) "Emergency Medical Technician Paramedic" (hereafter EMT-P) means a person who:~~
- ~~(i) Has completed all the requirements for certification as an EMT-P; and~~
- ~~(ii) Has successfully completed a course in intensive patient care including the required training under the supervision of a licensed physician, including training in cardiac defibrillation, cardiac monitoring, endotracheal intubation and drug administration; and~~
- ~~(iii) Has been examined and certified as an EMT-P by an authorized representative of the department.~~

(49) "Commission" means the Idaho emergency medical services physician commission.

(510) "Department" means the Idaho department of health and welfare.

(11) "Emergency medical responder" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(612) "Emergency Mmedical Sservices" or "EMS" means the ~~services~~ system utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(13) "EMS bureau" means the bureau of emergency medical services of the department.

(14) "Emergency medical technician" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(15) "Licensed personnel" means those individuals who are emergency medical responders, emergency medical technicians, advanced emergency medical technicians and paramedics.

(16) "National emergency medical services information system technical assistance center" means an organization that validates software for compliance with the EMS data set defined by the United States department of transportation national highway traffic safety administration.

(717) "Non-Transport SNontransport service" means an service agency licensed by the ~~department of health and welfare~~, EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at

an emergency scene, but not intended to be the service that will actually transport sick or injured persons.

~~(818)~~ "Non-Transport Vehicle" means any vehicle licensed by the department of health and welfare, EMS bureau, operated by an agency with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons.

(19) "Paramedic" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(920) "Supervision" means the medical direction by a licensed physician of activities provided by certified licensed personnel affiliated with a licensed ambulance, air medical or non-transport nontransport service, including, but not limited to: establishing standing orders and protocols, reviewing performance of certified licensed personnel, providing instructions for patient care via radio or telephone, and other oversight.

(210) "Transfer" means the transportation of a patient from one (1) medical care facility to another.

SECTION 3. That Section 56-1013, Idaho Code, be, and the same is hereby amended to read as follows:

56-1013. AUTHORIZED ACTIONS. Persons certified licensed by the ~~department~~ EMS bureau shall be authorized to perform such acts under written or oral authorization of a licensed physician as shall be established by rules of the commission, including, but not limited to, administration of intravenous solutions and drugs, cardiac defibrillation, airway management, endotracheal intubation, and other patient care.

SECTION 4. That Section 56-1013A, Idaho Code, be, and the same is hereby amended to read as follows:

56-1013A. IDAHO EMERGENCY MEDICAL SERVICES PHYSICIAN COMMISSION -- TERMS AND OPERATION. (1) There is hereby created in the ~~department of health and welfare~~ an Idaho emergency medical services physician commission for the purpose of establishing standards for scope of practice and medical supervision for certified licensed personnel, ~~ambulance services~~, and ~~nontransport~~ agencies licensed by the ~~department~~ EMS bureau, and for making disciplinary action recommendations to the ~~department~~ EMS bureau against certified licensed personnel. Notwithstanding any other provision of law to the contrary, the commission shall exercise its powers and duties in accordance with the provisions of sections 56-1011 through 56-1018~~B~~23, Idaho Code, relative to scope of practice and medical supervision of certified licensed personnel.

(2) The commission shall be composed of eleven (11) voting members appointed by the governor upon assurance of equitable geographic and rural representation. Six (6) members shall be physicians currently licensed in Idaho and appointed as follows: one (1) member representing the Idaho board of medicine as provided in chapter 18, title 54, Idaho Code, one (1) member representing the Idaho medical association, one (1) member representing the ~~emergency medical services (EMS) bureau of the department~~, one (1) member representing the Idaho chapter of the American college of emergency physicians, one (1) member representing the Idaho chapter of the American academy of pediatrics and one (1) member representing the Idaho chapter of the American college of surgeons committee on trauma. Three (3) members shall be physicians currently licensed in Idaho and practicing as an EMS

medical director representing the following associations: one (1) member representing the Idaho association of counties, one (1) member representing the Idaho fire chiefs association and one (1) member representing the Idaho hospital association. Two (2) members shall be Idaho citizens representing the public interest.

(3) Except as provided in this subsection, members of the commission shall be appointed for a term of three (3) years. The following four (4) members shall be appointed to an initial term of two (2) years: the member representing the board of medicine, the member representing the Idaho chapter of the American college of emergency physicians, the member representing the Idaho chapter of the American college of surgeons committee on trauma and the member representing the Idaho fire chiefs association. The remaining seven (7) members shall be appointed for an initial term of three (3) years. Thereafter, all terms shall be for a period of three (3) years.

(4) The commission shall elect a chair and such officers as it may deem necessary and appropriate. The commission shall meet at least annually and at the call of the chair. Members of the commission shall be compensated as provided in section 59-509(b), Idaho Code.

(5) Prior to the expiration of the regular term of a member of the commission or upon the occurrence or declaration of a vacancy in the membership of the commission, the ~~department~~ EMS bureau shall notify the represented entity of that fact in writing and the represented entity shall, within sixty (60) days thereafter, nominate at least three (3) persons to fill the vacancy in a manner as shall be determined by the rules and bylaws of the represented entity and shall forward the nominations to the governor, who shall appoint from among the nominees a person to be a member of the commission to fill the vacancy. Persons nominated for a seat held by a physician must be licensed by the state of Idaho to practice medicine.

(6) Moneys collected pursuant to rules promulgated by the ~~department board~~ for initial applications and renewal of EMS certifications personnel licenses are hereby continuously appropriated and shall be utilized exclusively for the purposes set forth in this section as determined by the commission.

(7) The commission shall prepare a budget on an annual basis indicating that portion of the funds necessary for the continuous operation of the commission to achieve the purposes of this section.

SECTION 5. That Section 56-1014, Idaho Code, be, and the same is hereby amended to read as follows:

56-1014. LIABILITY. No act or omission of any person who is duly ~~certified~~ licensed under sections 56-1011 through 56-101~~8B~~23, Idaho Code, by the ~~department of health and welfare~~ EMS bureau done or omitted in good faith while rendering emergency medical services to a person or persons who are perceived to need immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury shall impose any liability upon those personnel, the supervising physician, the hospital, the organization providing the service, or upon a federal, state, county, city or other local governmental unit, or upon employees of such governmental unit, unless such provider of care or such personnel be shown to have caused injury and damages to such person or persons as a proximate result of his, her or their reckless or grossly negligent misconduct, which shall be the sole grounds for civil liability of such persons in the provision of care or assistance under sections 56-1011 through 56-101~~8B~~23, Idaho Code, regardless of the circumstance under which such care or assistance may be provided. This section shall not relieve the organization or agency operating the service from the duty of securing, maintaining and operating, the equipment and licensure designated for use in performing the emergency medical services.

SECTION 6. That Section 56-1015, Idaho Code, be, and the same is hereby amended to read as follows:

56-1015. FAILURE TO OBTAIN CONSENT. No person ~~certified~~ licensed under sections 56-1011 through 56-1018B23, Idaho Code, or physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under sections 56-1011 through 56-1018B23, Idaho Code, shall be governed by chapter 45, title 39, Idaho Code.

SECTION 7. That Section 56-1016, Idaho Code, be, and the same is hereby amended to read as follows:

56-1016. AMBULANCE AGENCY MINIMUM STANDARDS. Each ambulance service, air medical service and ~~non-transport~~ nontransport service shall be licensed by the ~~department~~ EMS bureau based on the level of licensed personnel it utilizes, transport capability and self-declared geographic coverage area and shall meet the following standards:

(1) ~~Ambulance vehicles~~ — ~~Each new ambulance vehicle purchased after the effective date of these standards shall conform to the ambulance vehicle specifications for that type established by the board of health and welfare. The patient compartment of each ambulance vehicle shall be maintained in a clean and sanitary condition.~~

(2) ~~Ambulance equipment~~ — ~~Each ambulance shall be equipped with the patient care items deemed essential for that type of ambulance by the board of health and welfare.~~

(3) ~~Ambulance p~~Personnel during transport or transfer -- There shall be at least two (2) ~~ambulance~~ crew members on each patient transport or transfer, with the crew member delivering patient care being, at a minimum, a state certified licensed emergency medical technician (EMT), ~~except that with the patient's and the patient's physician's permission, an EMT attendant shall not be required on routine, nonemergency transfer calls.~~

(4) ~~Ambulance d~~Dispatch -- Each ~~ambulance service~~ licensed EMS agency shall have a twenty-four (24) hour dispatch arrangement and shall respond to calls on a twenty-four (24) hour basis.

(5) Ambulance Agency inspections and licensing -- ~~The department of health and welfare,~~ EMS bureau, shall conduct inspections at least annually related to ~~ambulance service agency~~ licensing or shall contract to have the inspections carried out. Each ~~ambulance and non-transport vehicle agency~~ shall have a current state license in order to operate.

(6) Ambulance service minimum standards waiver -- The controlling authority providing ambulance services may petition the board of health and welfare for waiver of the ambulance standards of sections ~~56-1011 through 56-1018B~~ 56-1016(2), Idaho Code, if compliance with these standards would cause undue hardship on the community being served, or would result in abandonment of ambulance services.

(7) Nontransport service minimum standards waiver -- The controlling authority providing nontransport services may petition the EMS bureau for waiver of the twenty-four (24) hour response requirement of this section if the petition demonstrates that the community, setting, industrial site or event is not populated on a twenty-four (24) hour basis or does not exist on a three hundred sixty-five (365) day per year basis or if compliance with these

standards would cause undue hardship on the community being served, or would result in abandonment of nontransport services.

(76) Supervision -- A licensed physician shall supervise the medical activities provided by ~~certified~~ licensed personnel affiliated with the licensed ~~ambulance or non-transport service~~ agency including, but not limited to: establishing standing orders and protocols, reviewing performance of ~~certified~~ licensed personnel, approving methods for ~~certified~~ licensed personnel to receive instructions for patient care via radio, telephone, or in person, and other oversight as provided in the rules of the commission.

(7) Applicants must submit the following information with their applications and agree to meet the following requirements as a condition of licensure:

(a) A declaration of anticipated applicant agency costs and revenues; a statement of projected changes in response time; and a narrative describing projected clinical benefits to patients resulting from licensure using methods defined in board rules concerning such matters on an application provided by the EMS bureau; and

(b) Collect and report data to the EMS bureau upon receiving a license using a data collection system that is validated as compliant by the national emergency medical services information system technical assistance center in accordance with board rules.

(8) The EMS bureau will provide notice of any such application to all cities, counties and other units of local government that have any geographic coverage area in common with the applicant in accordance with board rules. Such notice will include a summary of the applicant data supplied to the EMS bureau. Any other EMS bureau use of the cost and revenue data supplied by applicants is limited exclusively to informational purposes.

(9) Appeal of a denial of an applicant's license will be governed by IDAPA 16.05.03, rules governing contested case proceedings and declaratory rulings.

SECTION 8. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 56-1020, 56-1021 and 56-1022, Idaho Code, and to read as follows:

56-1020. PENALTIES FOR PERSONNEL LICENSE VIOLATIONS. Any person who practices or attempts to practice EMS as a licensed provider of emergency care as provided for in sections 56-1011 through 56-1023, Idaho Code, without having at the time of so doing a valid, unexpired, unrestricted, unrevoked and unsuspended license issued by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, shall be guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six (6) months, or both, for each violation. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the alleged violation, the attorney general is authorized to prosecute the alleged violation.

56-1021. PENALTIES FOR AGENCY LICENSE VIOLATIONS. Any person establishing, conducting, managing or operating any agency as provided for in sections 56-1011 through 56-1023, Idaho Code, without a license issued by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both. Each day of continuing violation shall constitute a separate offense. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of

notification of the alleged violation, the attorney general is authorized to prosecute the alleged violation.

56-1022. PERSONNEL AND AGENCIES LICENSURE ACTIONS -- GROUNDS -- PROCEDURE. (1) Subject to the provisions of chapter 52, title 67, Idaho Code, the EMS bureau, upon recommendation of the commission, may deny a license or refuse to renew a license for a person, or may suspend or revoke a license or may impose probationary conditions if the holder of a license or the applicant for a license has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Such unprofessional conduct includes, but is not limited to:

- (a) Obtaining a license by means of fraud, misrepresentation or concealment of a material fact;
- (b) Being found guilty of unprofessional conduct as defined by rule established by the board;
- (c) Being convicted of a crime which would have a direct and adverse bearing on the licensee's ability to practice or perform emergency medical care competently;
- (d) The unauthorized practice of medicine;
- (e) Violating any provisions of sections 56-1011 through 56-1023, Idaho Code, or any of the rules established by the board or the commission thereunder; or
- (f) Being found mentally incompetent by a court of competent jurisdiction.

(2) Subject to the provisions of chapter 52, title 67, Idaho Code, the EMS bureau may deny, revoke or refuse to renew a license of an agency, or may impose probationary conditions or fines as a condition of an agency's ability to retain a license in accordance with board rule.

(3) A denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the EMS bureau after opportunity for a hearing in a manner provided by rule established by the board. An application for reinstatement may be filed with the EMS bureau one (1) year from the date of license revocation. In the event a timely application is filed, the EMS bureau shall:

- (a) Hold a hearing to consider such reinstatement; and
- (b) Accept or reject the application for reinstatement.

SECTION 9. That Section 56-1017, Idaho Code, be, and the same is hereby amended to read as follows:

56-101723. RULES. (1) The commission is authorized and directed to adopt appropriate rules defining the allowable scope of practice and acts and duties which can be performed by persons ~~certified~~ licensed by the ~~department~~ EMS bureau and the required level of supervision by a licensed physician.

(2) The board ~~of health and welfare~~ is authorized and directed to adopt appropriate rules and standards concerning the administration of sections 56-1011 through 56-1018B22 and this section, Idaho Code, including criteria for ~~training~~ educational programs, certification and licensure of personnel, certification of EMS instructors, licensure of ambulance, air medical and nontransport services, licensure of manufacturing standards for ambulances and nontransport vehicles, criteria for the use of air medical services by certified licensed EMS personnel at emergency scenes, establishment of fees for training, inspections, and ~~certifications~~ licensure, appropriate requirements for ~~recertification~~ renewal of licensure of personnel and ~~equipment~~ agencies and the management of complaints, investigations and ~~certification~~ and license actions against certified licensed EMS personnel and ~~licensed EMS services~~ agencies. The rules of the board ~~of health and welfare~~ must be consistent with the rules adopted by the commission.

(3) Additionally, the department shall develop guidelines, standards and procedures for reducing exposure to pathogens from human blood, tissue or fluids. Such guidelines, standards and procedures shall be made available to all law enforcement personnel, all emergency medical services personnel and agencies, and such other emergency personnel who request such information.

Approved April 17, 2009.

CHAPTER 190
(S.B. No. 1146)

AN ACT

RELATING TO FOOD ESTABLISHMENTS; AMENDING SECTION 39-1602, IDAHO CODE, TO DEFINE ADDITIONAL TERMS; AND AMENDING SECTION 39-1607, IDAHO CODE, TO PERMIT THE DEPARTMENT OF HEALTH AND WELFARE'S DESIGNATED REGULATORY AUTHORITY TO CHARGE FOOD ESTABLISHMENTS A LICENSING FEE, TO REVISE LICENSE FEES FOR SPECIFIED FOOD ESTABLISHMENTS, TO PROVIDE TERMS AND CONDITIONS ON CERTAIN LICENSES, TO REMOVE REFERENCE TO THE FOOD SAFETY FUND AND TO PROVIDE FOR REVIEW OF THE FOOD INSPECTION PROGRAM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby amended to read as follows:

39-1602. DEFINITIONS. As used in this chapter:

(1) "Commissary" means a place where food, containers or supplies are stored, prepared or packaged for transit, sale or service at other locations.

(2) "Food establishment" means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments, and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premises and under common ownership shall as a whole be considered a single food establishment. The term "food establishment" does not include:

- (a) Private homes where food is prepared or served for individual family consumption;
- (b) Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed five (5) consecutive days on no more than three (3) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods;
- (c) Bed and breakfast establishments with ten (10) or fewer beds;
- (d) Establishments which offer only factory-sealed foods that are not potentially hazardous;
- (e) Agricultural markets; and

(f) Agricultural equipment used for the extraction or harvest of an agricultural product including, but not limited to, mint stills.

(3) "Intermittent food establishment" means a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers potentially hazardous food to the general public. Examples of a recurring event may be a farmers' or community market or a holiday market. "Intermittent food establishment" does not include the vendor of farm fresh ungraded eggs at a recurring event.

(4) "Mobile food establishment" means a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored or prepared for retail sale or given away at temporary locations.

(25) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of clostridium botulinum. Included is any food of animal origin, either raw or heat treated and any food of plant origin which has been heat treated or which is raw seed sprouts; cut melons; and garlic and oil mixtures. The term "potentially hazardous food" does not include:

- (a) Air-dried hard-boiled eggs with shells intact;
- (b) Foods with a water activity (aw) value of eighty-five hundredths (0.85) or less;
- (c) Foods with a pH (hydrogen ion concentration) level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;
- (d) Foods in unopened hermetically-sealed containers which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
- (e) Foods for which laboratory evidence, acceptable to the regulatory authority, demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of clostridium botulinum cannot occur;
- (f) Milk, half-and-half cream, butter products, frozen dairy desserts and other fluid milk products, in the original unopened container; and
- (g) Any other food items determined by the department of health and welfare not to be potentially hazardous.

(36) "Regulatory authority" means the director of the Idaho department of health and welfare or the director's designee.

(7) "Temporary food establishment" means a food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

SECTION 2. That Section 39-1607, Idaho Code, be, and the same is hereby amended to read as follows:

39-1607. LICENSE FEE. (1) A fee may be charged by the department of health and welfare's regulatory authority for licensing a food establishment. ~~The fee shall not exceed sixty five dollars (\$65.00) per establishment per year and shall be collected by the designated regulatory authority.~~

(a) The fee per food establishment for licenses issued from July 1, 2009, through June 30, 2010, shall be:

- (i) Sixty-five dollars (\$65.00) for temporary food establishments, intermittent food establishments and mobile food establishments without a commissary;

(ii) Seventy-five dollars (\$75.00) for mobile food establishments with a commissary;

(iii) Ninety-five dollars (\$95.00) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and

(iv) One hundred seven dollars and fifty cents (\$107.50) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(b) The fee per food establishment per year for licenses issued on and after July 1, 2010, shall be:

(i) Sixty-five dollars (\$65.00) for temporary food establishments, intermittent food establishments and mobile food establishments without a commissary;

(ii) Eighty-five dollars (\$85.00) for mobile food establishments with a commissary;

(iii) One hundred twenty-five dollars (\$125) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and

(iv) One hundred fifty dollars (\$150) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(2) A license issued to a temporary or intermittent food establishment by a regulatory authority shall be valid only for the celebration or event for which the license was issued; however, no additional license fee will be charged by a regulatory authority to a temporary or intermittent food establishment for other celebrations or events within the same calendar year and with the same menu.

(3) Fees collected for licensing a food establishment shall be used by the designated regulatory authority for funding a portion of the food safety inspection program. ~~Any funds remaining in the food safety fund after the effective date of this act shall be paid to the designated regulatory authority that collected the fee.~~

(4) On and after January 1, 2010, the regulatory authority shall review at three (3) year intervals the cost data associated with the operation of the food inspection program as well as actions taken to increase the efficiency of such program and provide a report on same to the health and welfare committees of the Idaho legislature.

Approved April 17, 2009.

CHAPTER 191
(H.B. No. 242)

AN ACT

RELATING TO THE IDAHO SMALL EMPLOYER INCENTIVE ACT; AMENDING SECTION 63-4402, IDAHO CODE, TO REVISE THE DEFINITION OF PROJECT PERIOD; AMENDING SECTION 63-4403, IDAHO CODE, TO EXTEND THE SUNSET DATE; AMENDING SECTION 63-4404, IDAHO CODE, TO EXTEND THE SUNSET DATE; AMENDING SECTION 63-4405, IDAHO CODE, TO EXTEND THE SUNSET DATE; AND AMENDING SECTION 63-4408, IDAHO CODE, TO EXTEND THE SUNSET DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-4402, Idaho Code, be, and the same is hereby amended to read as follows:

63-4402. DEFINITIONS. (1) The definitions contained in the Idaho income tax act, shall apply to this chapter unless modified in this chapter or unless the context clearly requires another definition.

(2) As used in this chapter:

(a) "Commission" means the Idaho state tax commission.

(b) "New plant and building facilities" means facility or facilities, including related parking facilities, where employees are physically employed.

(c) "Idaho income tax act" means chapter 30, title 63, Idaho Code.

(d) "Investment in new plant" means investment in new plant and building facilities that are:

(i) Qualified investments; or

(ii) Buildings or structural components of buildings.

(e) "New employee":

(i) Means an individual, employed primarily within the project site by the taxpayer, subject to Idaho income tax withholding whether or not any amounts are required to be withheld, covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, and who was eligible to receive employer provided coverage under a health benefit plan as described in section 41-4703, Idaho Code, during the taxable year. A person shall be deemed to be so employed if such person performs duties on a regular full-time basis.

(ii) The number of employees employed primarily within the project site by the taxpayer, during any taxable year for a taxpayer shall be the mathematical average of the number of such employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (e)(i) of this subsection (2). In the event the business is in operation for less than the entire taxable year, the number of employees of the taxpayer for the year shall be the average number actually employed during the months of operation, provided that the qualifications of paragraph (e)(i) of this subsection (2) are met.

(iii) Existing employees of the taxpayer who obtain new qualifying positions within the project site and employees transferred from a related taxpayer or acquired as part of the acquisition of a trade or business from another taxpayer within the prior twelve (12) months are not included in this definition unless the new position or transfer creates a net new job in Idaho.

(f) "Project period" means the period of time beginning at ~~the earlier~~ of a physical change to the project site or the first employment of new employees located in Idaho who are related to the activities at the project site, ~~but no earlier than January 1, 2006,~~ and ending when the facilities constituting the project are placed in service, but no later than December 31, 2012 and no longer than ten (10) years after the beginning.

(g) "Project site" means an area or areas at which new plant and building facilities are located and at which the tax incentive criteria have been or will be met and which are either:

(i) A single geographic area located in this state at which the new plant and building facilities owned or leased by the taxpayer are located; or

(ii) One (1) or more geographic areas located in this state if eighty percent (80%) or more of the investment required by subsection (2)(j)(i) of this section is made at one (1) of the areas.

(iii) The project site must be identified and described to the commission by a taxpayer subject to tax under the Idaho income tax act, in the form and manner prescribed by the commission.

- (h) "Qualified investment" shall be defined as in section 63-3029B, Idaho Code.
- (i) "Recapture period" means:
- (i) In the case of credits described in sections 63-4403 and 63-4404, Idaho Code, the same period for which a recapture of investment tax credit under section 63-3029B, Idaho Code, is required; or
 - (ii) In the case of credits described in section 63-4405, Idaho Code, five (5) years from the date the project period ends.
- (j) "Tax incentive criteria" means a taxpayer meeting at a project site the requirements of subparagraphs (i) and (ii) of this paragraph (j).
- (i) During the project period, making capital investments in new plant of at least five hundred thousand dollars (\$500,000) at the project site.
 - (ii) During a period of time beginning on January 1, 2006, and ending at the conclusion of the project period:
 - 1. Increasing employment at the project site by at least ten (10) new employees each of whom must earn at least nineteen dollars and twenty-three cents (\$19.23) per hour worked during the taxpayer's taxable year.
 - 2. Employment increases above the ten (10) new employees described in subparagraph (ii)1. of this paragraph (j) at the project site shall on average earn at least fifteen dollars and fifty cents (\$15.50) per hour worked during the taxpayer's taxable year. Calculation of the group average earnings shall not include amounts paid to any employee earning more than forty-eight dollars and eight cents (\$48.08) per hour.
 - 3. Earnings calculated pursuant to subparagraph (ii) of this paragraph (j) shall include income upon which Idaho income tax withholding is required under section 63-3035, Idaho Code, but shall not include income such as stock options or restricted stock grants.
 - 4. For purposes of determining whether the increased employment threshold has been met, employment at the project site shall be determined by calculating the increase of such new employees reported to the Idaho department of labor for employment security purposes over the employees so reported as of the beginning of the project period or no earlier than January 1, 2006, whichever is larger; and
 - 5. Maintaining net increased employment in Idaho required by subparagraph (ii) of this paragraph (j) during the remainder of the project period.
- (k) "Taxpayer," for purposes of paragraphs (j) and (e) of this subsection (2), means either:
- (i) A single taxpayer; or
 - (ii) In the context of a unitary group filing a combined report under section 63-3027(t), Idaho Code, all members of a unitary group includable in a combined report for the tax years in which the credit provided for by this chapter may be claimed. For all other purposes, the terms of section 63-3009, Idaho Code, and section 63-3027(t) (1), Idaho Code, apply to the meaning of "taxpayer."

SECTION 2. That Section 63-4403, Idaho Code, be, and the same is hereby amended to read as follows:

63-4403. ADDITIONAL INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) For taxable years beginning on or after January 1, 2006, and before December 31, 2010, and subject to the limitations of this chapter, a taxpayer who has

certified that the tax incentive criteria will be met within a project site during a project period shall, in regard to qualified investments made after the beginning of the project period and before December 31, 2012, in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one hundredths percent (3.75%) of the amount of qualified investment made during a taxable year, wherever located within this state.

(2) The credit allowed by this section shall not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer.

(3) The credit allowed by this section shall not exceed seven hundred fifty thousand dollars (\$750,000) in any one (1) taxable year.

SECTION 3. That Section 63-4404, Idaho Code, be, and the same is hereby amended to read as follows:

63-4404. REAL PROPERTY IMPROVEMENT TAX CREDIT. (1) For taxable years beginning on or after January 1, 2006, and before December 31, 2012, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two and five-tenths percent (2.5%) of the investment in new plant which is incurred during the project period applicable to the project site in which the investment is made.

(2) The credit allowed by this section shall not exceed one hundred twenty-five thousand dollars (\$125,000) in any one (1) taxable year.

(3) No credit is allowable under this section for a qualified investment in regard to which a credit under section 63-4403, Idaho Code, is available.

(4) The credit allowed by this section is limited to buildings and structural components of buildings related to new plant and building facilities.

SECTION 4. That Section 63-4405, Idaho Code, be, and the same is hereby amended to read as follows:

63-4405. ADDITIONAL INCOME TAX CREDIT FOR NEW JOBS. (1) Subject to the limitations of this chapter, for taxable years beginning on or after January 1, 2006, and before December 31, 2012, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, for the number of new employees earning more than a rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu of the credit amount in subsection (2) (a) of section 63-3029F, Idaho Code, be allowed the credit provided by this section. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following:

(a) The number of employees for the prior taxable year; or

(b) The average of the number of employees for the three (3) prior taxable years.

(2) The credit provided by this section shall be:

(a) One thousand five hundred dollars (\$1,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than twenty-four dollars and four cents (\$24.04) per hour worked but equal to or less than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked;

(b) Two thousand dollars (\$2,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of twenty-eight dollars and eighty-five cents

(\$28.85) per hour worked but equal to or less than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked;

(c) Two thousand five hundred dollars (\$2,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but equal to or less than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked;

(d) Three thousand dollars (\$3,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked.

(3) The credit allowed by subsection (1) of this section shall apply only to employment primarily within the project site. No credit shall be earned unless such employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(4) The credit allowed by this section shall not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer.

(5) Employees transferred from a related taxpayer or acquired from another taxpayer within the prior twelve (12) months shall not be included in the computation of the credit unless the transfer creates a net new job in Idaho.

SECTION 5. That Section 63-4408, Idaho Code, be, and the same is hereby amended to read as follows:

63-4408. SALES AND USE TAX INCENTIVES -- REBATES -- RECAPTURE. (1) For calendar years beginning on January 1, 2006, and ending on December 31, 20~~10~~²⁰, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within the project site shall be entitled to receive a rebate of twenty-five percent (25%) of all sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that the taxpayer or its contractors actually paid in regard to any property constructed, located or installed within the project site during the project period for that site.

(2) Upon filing of a written refund claim by the taxpayer entitled to the rebate, and subject to such reasonable documentation and verification as the commission may require, the rebate shall be paid by the commission as a refund allowable under section 63-3626, Idaho Code. A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year in which the taxes sought to be rebated were paid or the right to the rebate is lost.

(3) Any rebate paid shall be subject to recapture by the commission:

(a) At one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period, or

(b) In the event that the property is not used, stored or otherwise consumed within the project site for a period of sixty (60) consecutive full months after the property was placed in service, or

(c) In the event that the employment required in section 63-4402(2)(j), Idaho Code, is not maintained for sixty (60) consecutive full months from the date the project period ends.

(d) Any recapture required by subsection (3)(b) or (3)(c) of this section shall be in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(4) Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act, provided however, that in lieu of the provisions of section 63-3633, Idaho Code, the period of time

within which the commission may issue a notice under section 63-3629, Idaho Code, in regard to an amount subject to recapture, shall be the later of five (5) years after the end of the taxable year, for income tax purposes, in which the project period ends.

(5) The rebate allowed by this section is limited to sales and use taxes actually paid by the taxpayer or its contractors for taxable property related to new plant and building facilities.

Approved April 20, 2009.

CHAPTER 192
(H.B. No. 97, As Amended)

AN ACT

RELATING TO MOTOR VEHICLES AND TRAFFIC; AMENDING CHAPTER 14, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1421A, IDAHO CODE, TO PROVIDE FOR DRIVING A VEHICLE IN A HIGH OCCUPANCY VEHICLE LANE, TO PROVIDE FOR EXCEPTIONS, TO PROVIDE FOR PENALTIES, TO PROVIDE DEFINITIONS AND TO PROVIDE FOR APPLICATION OF LAW.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 14, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-1421A, Idaho Code, and to read as follows:

49-1421A. HIGH OCCUPANCY VEHICLE LANES -- PENALTIES -- DEFINITIONS. (1) Except as provided in subsections (2) and (3) of this section, a person shall not drive a vehicle carrying fewer than two (2) persons, including the driver, in a high occupancy vehicle lane at any time the use of the high occupancy vehicle lane is restricted to vehicles carrying two (2) or more persons, including the driver.

(2) A person may drive a motorcycle in a high occupancy vehicle lane at any time regardless of the number of passengers, without penalty.

(3) A person may drive a public transportation vehicle in a high occupancy vehicle lane at any time regardless of the number of passengers, without penalty.

(4) A person may drive an emergency vehicle in a high occupancy vehicle lane regardless of the number of passengers, without penalty, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or when performing normal patrol duties.

(5) A person may drive an authorized maintenance vehicle in a high occupancy vehicle lane regardless of the number of passengers, without penalty, when necessary to perform maintenance of that lane.

(6) Any violation of the provisions of this section shall be an infraction punishable by a fixed penalty of one hundred dollars (\$100).

(7) For the purposes of this section, the following terms have the following meanings:

(a) "High occupancy vehicle lane" means a designated lane of laned roadway where the use of such designated lane is restricted to vehicles carrying at least the minimum number of persons as provided for in this section and as designated by the director of the Idaho transportation department as indicated on official signs and other official traffic-control devices.

(b) "Public transportation vehicle" means a vehicle that:

(i) Provides a designated public transportation as defined in section 221 of the Americans with disabilities act of 1990 or pro-

vides public school transportation (that is, to and from public or private primary, secondary or tertiary schools); and

(ii) Is owned or operated by a public entity, or is operated under a contract with a public entity, or is operated pursuant to a license by the secretary of the United States department of transportation or an agency of the state of Idaho, to provide motorbus or school vehicle transportation services to the public.

(8) The provisions of this section shall apply only in counties with a population less than twenty-five thousand (25,000), according to the most recent census within the state of Idaho, and where such county includes a resort city authorized to approve certain nonproperty taxes pursuant to section 50-1044, Idaho Code.

Approved April 20, 2009.

CHAPTER 193
(H.B. No. 230)

AN ACT

RELATING TO PUBLICATION OF PERSONAL SERVICE CONTRACTS; AMENDING SECTION 59-514, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE PUBLICATION OF PERSONAL SERVICE CONTRACTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-514, Idaho Code, be, and the same is hereby amended to read as follows:

59-514. PUBLICATION OF CONTRACTEE, AMOUNT AND PURPOSE OF PERSONAL SERVICE CONTRACTS -- DEFINITION. (1) The state of Idaho, and all taxing entities within the state of Idaho, shall publish within fifteen (15) days of entering into any personal service contract, the parties, amount and a one (1) sentence purpose of all such personal service contracts over ten thousand dollars (\$10,000) annual payment, regardless of whether the moneys for such contract are derived from state taxes, local taxes, federal funds, or a combination of such funds; however, when such contracts are entered into with a county, the publication requirements provided in this section are satisfied when the required information is included in the next published monthly statement pursuant to the provisions of section 31-819, Idaho Code. The publication shall be in a newspaper of general circulation within the geographical area wherein such personal service is to be performed.

(2) "Personal service" means performance for remuneration by an individual on a specified contractual basis of specialized professional or consultive expertise germane to administration, maintenance or conduct of governmental activities which require intellectual or sophisticated and varied services, dependent upon facilities, invention, imagination or a specific talent which the state or the taxing entity itself cannot provide or accomplish.

Approved April 20, 2009.