

IN THE SENATE

SENATE BILL NO. 1366, As Amended

BY EDUCATION COMMITTEE

AN ACT

RELATING TO RECORDS EXEMPT FROM DISCLOSURE; AMENDING SECTION 9-340D, IDAHO CODE, TO EXEMPT CERTAIN FINANCIAL STATEMENTS SUBMITTED TO THE STATE BOARD OF EDUCATION, ITS DIRECTOR OR A REPRESENTATIVE THEREOF.

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

SECTION 1. That Section 9-340D, Idaho Code, be, and the same is hereby amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not

1 limited to, banks, savings and loan associations, regulated lenders,
2 business and industrial development corporations, credit unions, and
3 insurance companies, or for the regulation or supervision of the issuance of
4 securities.

5 (6) Records gathered by a local agency or the Idaho department of
6 commerce, as described in chapter 47, title 67, Idaho Code, for the specific
7 purpose of assisting a person to locate, maintain, invest in, or expand
8 business operations in the state of Idaho.

9 (7) Shipping and marketing records of commodity commissions used to
10 evaluate marketing and advertising strategies and the names and addresses of
11 growers and shippers maintained by commodity commissions.

12 (8) Financial statements and business information and reports
13 submitted by a legal entity to a port district organized under title 70,
14 Idaho Code, in connection with a business agreement, or with a development
15 proposal or with a financing application for any industrial, manufacturing,
16 or other business activity within a port district.

17 (9) Names and addresses of seed companies, seed crop growers, seed
18 crop consignees, locations of seed crop fields, variety name and acreage
19 by variety. Upon the request of the owner of the proprietary variety, this
20 information shall be released to the owner. Provided however, that if a seed
21 crop has been identified as diseased or has been otherwise identified by the
22 Idaho department of agriculture, other state departments of agriculture,
23 or the United States department of agriculture to represent a threat to
24 that particular seed or commercial crop industry or to individual growers,
25 information as to test results, location, acreage involved and disease
26 symptoms of that particular seed crop, for that growing season, shall be
27 available for public inspection and copying. This exemption shall not
28 supersede the provisions of section 22-436, Idaho Code, nor shall this
29 exemption apply to information regarding specific property locations
30 subject to an open burning of crop residue pursuant to section 39-114, Idaho
31 Code, names of persons responsible for the open burn, acreage and crop type
32 to be burned, and time frames for burning.

33 (10) Information obtained from books, records and accounts required
34 in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed
35 commission and pertaining to the individual production records of oilseed
36 growers.

37 (11) Records of any risk retention or self-insurance program prepared
38 in anticipation of litigation or for analysis of or settlement of potential
39 or actual money damage claims against a public entity and its employees
40 or against the industrial special indemnity fund except as otherwise
41 discoverable under the Idaho or federal rules of civil procedure. These
42 records shall include, but are not limited to, claims evaluations,
43 investigatory records, computerized reports of losses, case reserves,
44 internal documents and correspondence relating thereto. At the time
45 any claim is concluded, only statistical data and actual amounts paid in
46 settlement shall be deemed a public record unless otherwise ordered to be
47 sealed by a court of competent jurisdiction. Provided however, nothing
48 in this subsection is intended to limit the attorney client privilege or
49 attorney work product privilege otherwise available to any public agency or
50 independent public body corporate and politic.

1 (12) Records of laboratory test results provided by or retained by the
2 Idaho food quality assurance laboratory. Nothing in this subsection shall
3 limit the use which can be made, or availability of such information if used,
4 for regulatory purposes or its admissibility in any enforcement proceeding.

5 (13) Reports required to be filed under chapter 13, title 62, Idaho
6 Code, identifying electrical or natural or manufactured gas consumption
7 data for an individual customer or account.

8 (14) Voluntarily prepared environmental audits, and voluntary
9 disclosures of information submitted on or before December 31, 1997, to an
10 environmental agency as defined in section 9-803, Idaho Code, which are
11 claimed to be confidential business information.

12 (15) Computer programs developed or purchased by or for any public
13 agency or independent public body corporate and politic for its own use. As
14 used in this subsection, "computer program" means a series of instructions
15 or statements which permit the functioning of a computer system in a manner
16 designed to provide storage, retrieval and manipulation of data from the
17 computer system, and any associated documentation and source material that
18 explain how to operate the computer program. Computer program does not
19 include:

20 (a) The original data including, but not limited to, numbers, text,
21 voice, graphics and images;

22 (b) Analysis, compilation and other manipulated forms of the original
23 data produced by use of the program; or

24 (c) The mathematical or statistical formulas that would be used if the
25 manipulated forms of the original data were to be produced manually.

26 (16) Active investigative records and trademark usage audits of the
27 Idaho potato commission specifically relating to the enforcement of chapter
28 12, title 22, Idaho Code, until the commencement of formal proceedings
29 as provided by rules of the commission; purchase and sales information
30 submitted to the Idaho potato commission during a trademark usage audit,
31 and investigation or enforcement proceedings. Inactive investigatory
32 records shall be disclosed unless the disclosure would violate the standards
33 set forth in subsections (1) (a) through (f) of section 9-335, Idaho Code.
34 Nothing in this subsection shall limit the use which can be made, or
35 availability of such information if used, for regulatory purposes or its
36 admissibility in any enforcement proceeding.

37 (17) All records copied or obtained by the director of the department of
38 agriculture or his designee as a result of an inspection pursuant to section
39 25-3806, Idaho Code, except:

40 (a) Records otherwise deemed to be public records not exempt from
41 disclosure pursuant to this chapter; and

42 (b) Inspection reports, determinations of compliance or noncompliance
43 and all other records created by the director or his designee pursuant
44 to section 25-3806, Idaho Code.

45 (18) All data and information collected by the division of animal
46 industries or the state brand board pursuant to the provisions of section
47 25-207B, Idaho Code, or rules promulgated thereunder.

48 (19) Records disclosed to a county official by the state tax commission
49 pursuant to subsection (4) (c) of section 63-3029B, Idaho Code.

1 (20) Records, data, information and materials collected, developed,
2 generated, ascertained or discovered during the course of academic research
3 at public institutions of higher education if the disclosure of such could
4 reasonably affect the conduct or outcome of the research, or the ability
5 of the public institution of higher education to patent or copyright the
6 research or protect intellectual property.

7 (21) Records, data, information and materials collected or utilized
8 during the course of academic research at public institutions of higher
9 education provided by any person or entity other than the public institution
10 of higher education or a public agency.

11 (22) The exemptions from disclosure provided in subsections (20)
12 and (21) of this section shall apply only until the academic research is
13 publicly released, copyrighted or patented, or until the academic research
14 is completed or terminated. At such time, the records, data, information,
15 and materials shall be subject to public disclosure unless: (a) another
16 exemption in this chapter applies; (b) such information was provided to the
17 institution subject to a written agreement of confidentiality; or (c) public
18 disclosure would pose a danger to persons or property.

19 (23) The exemptions from disclosure provided in subsections (20) and
20 (21) of this section do not include basic information about a particular
21 research project that is otherwise subject to public disclosure, such as the
22 nature of the academic research, the name of the researcher, and the amount
23 and source of the funding provided for the project.

24 (24) Records of a county assessor containing information showing the
25 income and expenses of a taxpayer, which information was provided to the
26 assessor by the taxpayer to permit the assessor to determine the value of
27 property of the taxpayer.

28 (25) Results of laboratory tests which have no known adverse impacts to
29 human health conducted by the Idaho state department of agriculture animal
30 health laboratory, related to diagnosis of animal diseases of individual
31 animals or herds, on samples submitted by veterinarians or animal owners
32 unless:

33 (a) The laboratory test results indicate the presence of a state or
34 federally reportable or regulated disease in animals;

35 (b) The release of the test results is required by state or federal law;
36 or

37 (c) The test result is identified as representing a threat to animal or
38 human health or to the livestock industry by the Idaho state department
39 of agriculture or the United States department of agriculture.
40 Nothing in this subsection shall limit the use which can be made, or
41 availability of such information if used, for regulatory purposes or
42 its admissibility in any enforcement proceeding, or the duty of any
43 person to report contagious or infectious diseases as required by state
44 or federal law.

45 (26) Results of laboratory tests conducted by the Idaho state
46 department of agriculture seed laboratory on samples submitted by seed
47 producers or seed companies. Nothing in this subsection shall limit the
48 use which can be made, or availability of such information pursuant to the
49 provisions of subsections (9) and (10) of section 22-418, Idaho Code.

1 (27) For policies that are owned by private persons, and not by a public
2 agency of the state of Idaho, records of policies, endorsements, affidavits
3 and any records that discuss policies, endorsements and affidavits that may
4 be required to be filed with or by a surplus line association pursuant to
5 chapter 12, title 41, Idaho Code.

6 (28) Individual financial statements of a postsecondary educational
7 institution or a proprietary school submitted to the state board of
8 education, its director or a representative thereof, for the purpose of
9 registering the postsecondary educational institution or proprietary
10 school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided
11 pursuant to an administrative rule of the board adopted pursuant to such
12 sections.