

IN THE SENATE

SENATE BILL NO. 1184

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO LIBERTY PRESERVATION ACT; PROVIDING A SHORT TITLE;  
2 PROVIDING LEGISLATIVE INTENT; AMENDING TITLE 18, IDAHO CODE, BY THE  
3 ADDITION OF A NEW CHAPTER 12, TITLE 18, IDAHO CODE, TO PROVIDE DEFINI-  
4 TIONS, TO PROVIDE THAT CERTAIN PORTIONS OF THE FEDERAL NATIONAL DEFENSE  
5 AUTHORIZATION ACT OF 2012 ARE INVALID, TO PROVIDE THAT STATE ACTORS ARE  
6 PROHIBITED FROM SUPPORTING AND PARTICIPATING IN THE CERTAIN INDEFINITE  
7 DETENTION PROVISION OF THE NATIONAL DEFENSE AUTHORIZATION ACT, TO PRO-  
8 VIDE OFFENSES AND PENALTIES AND TO PROVIDE A CERTAIN REPORT; PROVIDING  
9 SEVERABILITY; AND DECLARING AN EMERGENCY.  
10

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

12 SECTION 1. SHORT TITLE. This act shall be known and may be cited as the  
13 "Idaho Liberty Preservation Act."

14 SECTION 2. LEGISLATIVE INTENT. The Legislature finds that:

15 (1) The Tenth Amendment to the United States Constitution authorizes  
16 the United States federal government to exercise only those powers specifi-  
17 cally delegated to it under Section 8, Article I, of the United States Con-  
18 stitution;

19 (2) The guaranty of the constitutional limitations on federal power  
20 is a matter of contract between the several states, including the State of  
21 Idaho, and the federal government at the time the United States Constitution  
22 was ratified and subsequently amended by the Bill of Rights;

23 (3) Article VI, of the United States Constitution, provides that the  
24 laws of the United States federal government are the supreme law of the land  
25 only if those laws are adopted in accordance with the powers delegated to the  
26 federal government in the United States Constitution;

27 (4) The President of the United States has asserted that the Authoriza-  
28 tion for the Use of Military Force (P.L. 107-40), enacted in 2001, authorizes  
29 the president to indefinitely detain, without charge, any person, includ-  
30 ing a citizen of the United States or a lawful resident alien, regardless of  
31 whether the person is apprehended inside or outside the borders of the United  
32 States;

33 (5) Sections 1021 and 1022 of the National Defense Authorization Act  
34 for Fiscal Year 2012 (P.L. 112-81) authorize:

35 (a) Indefinite detention of persons apprehended within the United  
36 States without charge or trial;

37 (b) Prosecution by military tribunals under the law of war for persons  
38 apprehended within the United States; and

39 (c) Transfer of persons apprehended within the United States to foreign  
40 jurisdictions;

41 (6) In authorizing the actions described in subsection (5) of this  
42 section, Sections 1021 and 1022 of the National Defense Authorization Act

1 for Fiscal Year 2012 (P.L. 112-81) are inimical to the liberty, security and  
2 well-being of the citizens of the State of Idaho by violating:

- 3 (a) The Constitution of the State of Idaho;  
4 (b) The limits of federal power authorized by Section 8, Article I, of  
5 the United States Constitution;  
6 (c) The legal doctrine of Posse Comitatus under 18 U.S.C. Section  
7 1385, by authorizing the armed forces of the United States to police the  
8 United States; and  
9 (d) The following provisions of the United States Constitution:  
10 (i) Clause 2, Section 9, Article I, (ensuring the right to seek  
11 writ of habeas corpus);  
12 (ii) The First Amendment (ensuring the right to petition the fed-  
13 eral government for the redress of grievances);  
14 (iii) The Fourth Amendment (ensuring the right to be free from un-  
15 reasonable search and seizure);  
16 (iv) The Fifth Amendment (requiring capital or infamous crimes to  
17 be brought before a grand jury before charging the defendant and  
18 prohibiting deprivation of life, liberty, or property without due  
19 process of law);  
20 (v) The Sixth Amendment (ensuring the right to a speedy trial by an  
21 impartial jury in the state or district where the offense was al-  
22 leged to have been committed, the right to be informed of the na-  
23 ture and cause of accusations and charges levied, the right to re-  
24 tain legal counsel, and the right to confront witnesses);  
25 (vi) The Eighth Amendment (prohibiting excessive bail and fines  
26 and prohibiting cruel and unusual punishment); and  
27 (vii) The Fourteenth Amendment (prohibiting deprivation of life,  
28 liberty, or property without due process of law);

29 (7) The actions described in subsection (5) of this section as autho-  
30 rized in Sections 1021 and 1022 of the National Defense Authorization Act for  
31 Fiscal Year 2012 (P.L. 112-81), and the enforcement of those actions, are il-  
32 legal within this state.

33 SECTION 3. That Title 18, Idaho Code, be, and the same is hereby amended  
34 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
35 ter 12, Title 18, Idaho Code, and to read as follows:

36 CHAPTER 12  
37 IDAHO LIBERTY PRESERVATION ACT

38 18-1201. DEFINITIONS. As used in this chapter:

39 (1) "Indefinite detention provision of the national defense authoriza-  
40 tion act" means:

- 41 (a) Section 1021 of the national defense authorization act for fiscal  
42 year 2012 (P.L. 112-81); or  
43 (b) Any substantially similar provision of another federal law, in-  
44 cluding a reenactment or reauthorization of the national defense  
45 authorization act (NDAA), that authorizes the indefinite detention of  
46 Americans without trial.

47 (2) "State actor" means:

1 (a) The state of Idaho, including all branches, departments, divi-  
2 sions, agencies, boards, commissions and other governmental bodies of  
3 the state;

4 (b) Counties, cities, districts and all other political subdivisions  
5 of the state of Idaho;

6 (c) An employee or member of an entity described in paragraph (a) or (b)  
7 of this subsection, when acting in the employee's or member's official  
8 capacity.

9 18-1202. IDAHO LIBERTY PRESERVATION ACT -- CERTAIN PORTIONS OF THE  
10 FEDERAL NATIONAL DEFENSE AUTHORIZATION ACT OF 2012 ARE INVALID. Sections  
11 1021 and 1022 of the national defense authorization act for fiscal year 2012,  
12 P.L. 112-81, violate portions of federal law, the United States constitution  
13 and the constitution of the state of Idaho and, as such, are invalid and il-  
14 legal in this state.

15 18-1203. STATE ACTORS PROHIBITED FROM SUPPORTING AND PARTICIPATING IN  
16 THE INDEFINITE DETENTION PROVISION OF THE NDAA. (1) State actors may not pro-  
17 vide material support for, nor participate in any way with, the implementa-  
18 tion within this state of sections 1021 and 1022 of the national defense au-  
19 thorization act for fiscal year 2012, P.L. 112-81.

20 (2) Except as provided in subsection (3) of this section, notwithstand-  
21 ing any other provision of law, a state actor may not aid any federal agency  
22 in the investigation, prosecution or detention of a person under the indef-  
23 inite detention provision of the NDAA, if the aid would cause the state ac-  
24 tor to violate the constitution of the United States, the constitution of the  
25 state of Idaho or any state law.

26 (3) A state actor may participate in a joint task force, partnership  
27 or other cooperative agreement with a federal law enforcement agency if the  
28 task force, partnership or cooperative agreement is not for the purpose of  
29 investigating, prosecuting or detaining a person under the indefinite de-  
30 tention provision of the NDAA.

31 18-1204. OFFENSES -- PENALTIES. A person who is a public officer, of-  
32 ficial, employee or agent of this state commits a misdemeanor offense if such  
33 person knowingly and willfully enforces or attempts to enforce indefinite  
34 detention provisions of the NDAA. A misdemeanor offense under this section  
35 is punishable by imprisonment for a term not to exceed one hundred eighty  
36 (180) days, a fine of not more than one thousand dollars (\$1,000), or both  
37 such imprisonment and fine.

38 18-1205. REPORT. Any law enforcement agency in this state shall imme-  
39 diately report to the governor and to the legislature any attempt by an agent  
40 or agency of the federal government to implement the indefinite detention  
41 provision of the NDAA through the Idaho state police or another state actor.

42 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared  
43 to be severable and if any provision of this act or the application of such  
44 provision to any person or circumstance is declared invalid for any reason,  
45 such declaration shall not affect the validity of the remaining portions of  
46 this act.

1           SECTION 5. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval.