

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 536

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TRESPASS; AMENDING SECTION 6-202, IDAHO CODE, TO PROVIDE FOR
2 ACTIONS FOR CIVIL TRESPASS, TO PROVIDE DEFINITIONS, TO DESCRIBE CERTAIN
3 ACTIONS CONSTITUTING CIVIL TRESPASS AND TO PROVIDE FOR PENALTIES; RE-
4 PEALING SECTION 6-202A, IDAHO CODE, RELATING TO DEFINITIONS OF CERTAIN
5 TERMS; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER
6 31, TITLE 6, IDAHO CODE, TO PROVIDE FOR THE LIABILITY AND DUTY OF A LAND
7 POSSESSOR TO A TRESPASSER AND TO PROVIDE FOR THE APPLICABILITY OF THE
8 ATTRACTIVE NUISANCE COMMON LAW DOCTRINE; REPEALING SECTION 18-7008,
9 IDAHO CODE, RELATING TO TRESPASS; AMENDING CHAPTER 70, TITLE 18, IDAHO
10 CODE, BY THE ADDITION OF A NEW SECTION 18-7008, IDAHO CODE, TO PROVIDE
11 FOR CRIMINAL TRESPASS, TO PROVIDE DEFINITIONS, TO DESCRIBE CERTAIN AC-
12 TIONS CONSTITUTING CRIMINAL TRESPASS, TO PROVIDE AN EXCEPTION AND TO
13 PROVIDE FOR PENALTIES; REPEALING SECTION 18-7011, IDAHO CODE, RELATING
14 TO CRIMINAL TRESPASS; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE
15 FOR A VIOLATION OF TRESPASSING FOR THE PURPOSE OF HUNTING, RETRIEVING
16 WILDLIFE, FISHING OR TRAPPING AND TO MAKE TECHNICAL CORRECTIONS; RE-
17 PEALING SECTION 36-1602, IDAHO CODE, RELATING TO HUNTING ON CERTAIN
18 LANDS WITHOUT PERMISSION; AMENDING SECTION 36-1603, IDAHO CODE, TO PRO-
19 HIBIT TRESPASSING WHILE HUNTING AND FISHING AND TO PROVIDE REMEDIES;
20 AMENDING SECTION 36-1604, IDAHO CODE, TO PROVIDE FOR THE APPLICABILITY
21 OF CERTAIN REMEDIES WITH RESPECT TO THE LIABILITY OF THOSE USING THE
22 LAND OF ANOTHER PERSON FOR RECREATION AND TO MAKE TECHNICAL CORREC-
23 TIONS; AMENDING SECTION 36-1108, IDAHO CODE, TO PROVIDE A CORRECT CODE
24 REFERENCE; AND PROVIDING AN EFFECTIVE DATE FOR THE ACCRUAL OF ACTIONS.
25

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

27 SECTION 1. That Section 6-202, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this
30 section:

31 (a) "Crops" means field crops including, but not limited to, grains,
32 feed crops, legumes, fruits and vegetables.

33 (b) "Cultivated land" means:

34 (i) Land whose soil is loosened or broken up for the raising of
35 crops;

36 (ii) Land used for the raising of crops; or

37 (iii) Pasturage that is artificially irrigated.

38 (c) "Enter" or "enters" means going upon or over real property either
39 in person or by causing any object, substance or force to go upon or over
40 real property.

41 (d) "Permission" means:

1 (i) Written authorization from the owner or his agent to enter
 2 upon private land, which shall include the signature of the owner
 3 or his agent, the name of the person being given permission, the
 4 appropriate dates that the permission is valid and a general de-
 5 scription of the property; or

6 (ii) Any other license, invitation or privilege to enter upon pri-
 7 ivate land from the owner or his agent.

8 A landowner or his agent may revoke permission to enter or remain at any time,
 9 for any reason, orally, in writing or by any form of notice reasonably appar-
 10 ent to the permitted persons.

11 (e) "Willfully and intentionally" means:

12 (i) A person has actual knowledge that his presence is not permit-
 13 ted; or

14 (ii) A person enters or remains upon the real property of another
 15 that displays sufficient indications of private ownership to put
 16 a reasonable person on notice that his presence is not permitted.
 17 The following examples, without limitation, are presumptive proof
 18 that real property displays sufficient indications of private
 19 ownership to put a reasonable person on notice that his presence is
 20 not permitted:

21 1. Property that is fenced or otherwise enclosed in a man-
 22 ner that a reasonable person would recognize as delineating
 23 a private property boundary;

24 2. Cultivated land;

25 3. Property that is posted with signs prohibiting trespass
 26 or clearly displays bright orange or fluorescent paint at
 27 all property corners, fishing streams crossing property
 28 lines, roads, gates and rights-of-way entering the land or
 29 in a manner that would reasonably be expected to be seen by a
 30 person in the area; or

31 4. Property that is reasonably associated with a residence
 32 or place of business.

33 (2) Any person who, without permission of the owner, or the owner's
 34 agent, willfully and intentionally enters or remains upon the real property
 35 of another person which property is posted with "No Trespassing" signs or
 36 other notices of like meaning, spaced at intervals of not less than one (1)
 37 notice per six hundred sixty (660) feet along such real property; or who
 38 willfully and intentionally cuts down or carries off any wood or underwood,
 39 tree or timber, or girdling, or otherwise willfully and intentionally in-
 40 jures any tree or timber on the land of another person, or on the street or
 41 highway in front of any person's house, village, or city lot, or cultivated
 42 grounds; or on the commons or public grounds of or in any city or town, or on
 43 the street or highway in front thereof, without lawful authority, is liable
 44 to the owner of such land, or to such city or town, for treble the amount of
 45 damages which may be assessed therefor or fifty dollars (\$50.00), plus a
 46 reasonable attorney's fee which shall be taxed as costs, in any civil action
 47 brought to enforce the terms of this act if the plaintiff prevails without
 48 permission commits a civil trespass. Any conduct constituting trespassing
 49 as described by this section shall not be deemed an innocent mistake.

1 (3) Civil trespass shall include causing damage or injury to real and
2 personal property while present upon the real property of another, includ-
3 ing, without limitation:

4 (a) Cutting down or carrying off any wood, underbrush, tree or timber,
5 or girdling or otherwise willfully and intentionally injuring any tree
6 or timber on the land of another person, or on the street or highway in
7 front of any person's house, village or city lot or cultivated grounds;
8 or on the commons or public grounds of or in any city or town, or on the
9 street or highway in front thereof, without lawful authority;

10 (b) Maliciously injuring or severing from the property anything at-
11 tached thereto, or the produce thereof;

12 (c) Digging, taking or carrying away any earth, soil or stone from any
13 lot situated within the limits of any incorporated city, without the li-
14 cence of the owner or legal occupant thereof;

15 (d) Digging, taking or carrying away any earth, soil or stone from any
16 land in any of the cities of the state, laid down on the map or plan of
17 such city or otherwise recognized or established as a street, alley, av-
18 enue or park, without the license of the property authorities;

19 (e) Willfully opening, tearing down or otherwise destroying any fence
20 on the enclosed land of another, or opening any gate, bar or fence of an-
21 other and willfully leaving it open or using the corral or corrals of an-
22 other without the permission of the owner;

23 (f) Willfully covering up or encumbering in any manner the land or city
24 lot of another, without permission from the owner or custodian thereof;

25 (g) Killing or injuring a domestic animal not his own without provoca-
26 tion, intentionally and without the consent of the animal's owner;

27 (h) Leaving open any gates on or about the property, or tearing down
28 or laying down any fencing, or willfully removing, mutilating, damag-
29 ing or destroying any "no trespassing" signs or markers or going through
30 cultivated crops that have not been harvested, or damaging any property
31 thereon;

32 (i) Driving a motor vehicle, as defined in sections 49-114 and 49-123,
33 Idaho Code, into, upon, over or through any private land that is ac-
34 tively devoted to cultivated crops without permission; or

35 (j) Injuring or killing livestock.

36 (4) This section does not apply to those who enter or remain upon real
37 property in compliance with a landlord and tenant relationship, or to those
38 exercising valid easement rights or other valid legal rights of possession
39 or use of the real property.

40 (5) Any person found liable for a trespass pursuant to this section
41 shall be subject to the following penalties:

42 (a) The greater of:

43 (i) A civil fine or penalty of five hundred dollars (\$500); or

44 (ii) Treble the amount of actual damages caused by the trespass;

45 (b) Reasonable attorney's fees, which shall be taxed as costs in any
46 civil action brought to enforce the provisions of this section, if the
47 plaintiff prevails; and

48 (c) Any costs associated with investigating any trespass, which shall
49 be taxed as costs in any civil action brought to enforce the provisions
50 of this section, if the plaintiff prevails.

1 Provided however, the owner or operator of any right-of-way or easement for
 2 any ditch, canal or other conduit governed by the provisions of chapter 11 or
 3 chapter 12, title 42, Idaho Code, who is found in violation of this section
 4 shall be liable only for actual damages and not for any treble damages or at-
 5 torney's fees or investigation costs otherwise provided for under this sec-
 6 tion.

7 SECTION 2. That Section 6-202A, Idaho Code, be, and the same is hereby
 8 repealed.

9 SECTION 3. That Title 6, Idaho Code, be, and the same is hereby amended
 10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
 11 ter 31, Title 6, Idaho Code, and to read as follows:

12 CHAPTER 31
 13 LIABILITY OF LAND POSSESSOR TO TRESPASSER

14 6-3101. DUTY OF LAND POSSESSOR TO TRESPASSER. A possessor of any in-
 15 terest in real property, including an owner, lessee or other lawful occu-
 16 pant, owes no duty of care to a trespasser, except to refrain from inten-
 17 tional or willful and wanton acts that cause injury to the trespasser.

18 6-3102. ATTRACTIVE NUISANCE. Nothing in this chapter shall affect the
 19 common law doctrine of attractive nuisance.

20 6-3103. APPLICABILITY. This chapter does not create or increase the
 21 liability of any possessor of real property and does not affect any other
 22 statutory or common law immunities from or defenses to civil liability to
 23 which a possessor of real property may be entitled.

24 SECTION 4. That Section 18-7008, Idaho Code, be, and the same is hereby
 25 repealed.

26 SECTION 5. That Chapter 70, Title 18, Idaho Code, be, and the same is
 27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 28 ignated as Section 18-7008, Idaho Code, and to read as follows:

29 18-7008. CRIMINAL TRESPASS -- DEFINITIONS AND ACTS CONSTITUT-
 30 ING. (1) Definitions. As used in this section:

31 (a) "Crops" means field crops including, but not limited to, grains,
 32 feed crops, legumes, fruits and vegetables.

33 (b) "Cultivated land" means:

34 (i) Land whose soil is loosened or broken up for the raising of
 35 crops;

36 (ii) Land used for the raising of crops; or

37 (iii) Pasturage that is artificially irrigated.

38 (c) "Enter," "enters" or "entry" means going upon or over real property
 39 either in person or by causing any object, substance or force to go upon
 40 or over real property.

1 (d) "Permission" means:

2 (i) Written authorization from the owner or his agent to enter
3 upon private land, which shall include the signature of the owner
4 or his agent, the name of the person being given permission, the
5 appropriate dates that the permission is valid and a general de-
6 scription of the property; or

7 (ii) Any other license, invitation or privilege to enter upon pri-
8 vate land from the owner or his agent.

9 A landowner or his agent may revoke permission to enter or remain at any time,
10 for any reason, orally, in writing or by any form of notice reasonably appar-
11 ent to the permitted persons.

12 (e) "Willfully and intentionally" means:

13 (i) A person has actual knowledge that his presence is not permit-
14 ted; or

15 (ii) A person enters or remains upon real property of another that
16 displays sufficient indications of private ownership to put a rea-
17 sonable person on notice that his presence is not permitted. The
18 following examples, without limitation, are presumptive proof
19 that real property displays sufficient indications of private
20 ownership to put a reasonable person on notice that his presence is
21 not permitted:

22 1. Property that is fenced or otherwise enclosed in a man-
23 ner that a reasonable person would recognize as delineating
24 a private property boundary;

25 2. Cultivated land;

26 3. Property that is posted with signs prohibiting trespass
27 or a clear display of bright orange or fluorescent paint
28 at all property corners, fishing streams crossing property
29 lines, roads, gates and rights-of-way entering the land or
30 in a manner that would reasonably be expected to be seen by a
31 person in the area; or

32 4. Property that is reasonably associated with a residence
33 or place of business.

34 (2) Acts Constituting.

35 (a) Every person who willfully and intentionally enters or remains upon
36 the real property of another person without permission commits a crimi-
37 nal trespass and is guilty of a misdemeanor, except as provided in sub-
38 section (3) (c) of this section.

39 (b) Criminal trespass shall include causing damage or injury to real
40 and personal property while present upon the real property of another,
41 including, without limitation:

42 (i) Cutting down or carrying off any wood, underbrush, tree or
43 timber, or girdling or otherwise willfully and intentionally in-
44 juring any tree or timber on the land of another person, or on the
45 street or highway in front of any person's house, village or city
46 lot or cultivated grounds; or on the commons or public grounds
47 of or in any city or town, or on the street or highway in front
48 thereof, without lawful authority;

49 (ii) Maliciously injuring or severing from the property anything
50 attached thereto, or the produce thereof;

1 (iii) Digging, taking or carrying away any earth, soil or stone
 2 from any lot situated within the limits of any incorporated city,
 3 without the license of the owner or legal occupant thereof;

4 (iv) Digging, taking or carrying away any earth, soil or stone
 5 from any land in any of the cities of the state, laid down on the
 6 map or plan of such city or otherwise recognized or established as
 7 a street, alley, avenue or park, without the license of the prop-
 8 erty authorities;

9 (v) Willfully opening, tearing down or otherwise destroying any
 10 fence on the enclosed land of another, or opening any gate, bar or
 11 fence of another and willfully leaving it open or using the corral
 12 or corrals of another without the permission of the owner;

13 (vi) Willfully covering up or encumbering in any manner the land
 14 or city lot of another, without permission from the owner or custo-
 15 dian thereof;

16 (vii) Killing or injuring a domestic animal not his own without
 17 provocation, intentionally and without the consent of the ani-
 18 mal's owner;

19 (viii) Leaving open any gates on or about the property, or tearing
 20 down or laying down any fencing, or willfully removing, mutilat-
 21 ing, damaging or destroying any "no trespassing" signs or markers
 22 or going through cultivated crops that have not been harvested, or
 23 damaging any property thereon;

24 (ix) Driving a motor vehicle, as defined in sections 49-114 and
 25 49-123, Idaho Code, into, upon, over or through any private land
 26 that is actively devoted to cultivated crops without permission;
 27 or

28 (x) Injuring or killing livestock.

29 (c) This section does not apply to those who enter or remain upon real
 30 property pursuant to a landlord and tenant relationship, or to those ex-
 31 exercising valid easement rights or other valid legal rights of posses-
 32 sion or use of the real property.

33 (3) Penalties.

34 (a) Any person who pleads guilty to or is found guilty of a violation of
 35 subsection (2) of this section for the first time:

36 (i) May be sentenced to jail for a period of not more than six (6)
 37 months; and

38 (ii) Shall be fined in an amount of not less than five hundred dol-
 39 lars (\$500) and not to exceed one thousand dollars (\$1,000).

40 (b) Any person who pleads guilty to or is found guilty of a violation of
 41 subsection (2) of this section for a second time within five (5) years:

42 (i) May be sentenced to jail for a period of not more than six (6)
 43 months;

44 (ii) Shall be fined in an amount of not less than one thousand dol-
 45 lars (\$1,000) and not to exceed three thousand dollars (\$3,000);
 46 and

47 (iii) Shall have any hunting or fishing license issued to the per-
 48 son revoked pursuant to section 36-1402(e), Idaho Code, if the
 49 person reasonably can be construed to be hunting, fishing, re-
 50 trieving wildlife or trapping while trespassing.

1 (c) Any person who pleads guilty to or is found guilty of a violation
 2 of subsection (2) of this section who previously has been found guilty
 3 of or has pled guilty to two (2) or more violations of the provisions
 4 of subsection (2) of this section within ten (10) years, notwithstand-
 5 ing the form of the judgments or withheld judgments, shall be guilty of a
 6 felony and:

7 (i) May be sentenced to the custody of the state board of correc-
 8 tion for not to exceed one (1) year; and

9 (ii) May be fined in an amount not to exceed five thousand dollars
 10 (\$5,000).

11 (d) In addition to any other penalty prescribed by law, a court may im-
 12 pose a civil penalty in an amount up to treble the damage caused.

13 (e) In addition to any other penalty prescribed by law, a court shall,
 14 for any violation of subsection (2) of this section, order restitution
 15 in accordance with section 19-5304, Idaho Code.

16 SECTION 6. That Section [18-7011](#), Idaho Code, be, and the same is hereby
 17 repealed.

18 SECTION 7. That Section 36-1402, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION
 21 OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Except as pro-
 22 vided for in subsection (b) of this section, any person who pleads guilty to
 23 or is found guilty of an infraction of this code, or rules or proclamations
 24 promulgated pursuant thereto, shall be subject to a fine of seventy-two dol-
 25 lars (\$72.00).

26 (b) A violation of section 36-1401(a)1.(K) through (L) or (a)2.(S)
 27 through (X), Idaho Code, shall constitute an infraction subject to a fine of
 28 two hundred fifty dollars (\$250).

29 (c) Misdemeanor Penalty. Any person entering a plea of guilty for,
 30 found guilty of or convicted of a misdemeanor under the provisions of this
 31 title or rules or proclamations promulgated pursuant thereto shall, ex-
 32 cept in cases where a higher penalty is prescribed, be fined in a sum of not
 33 less than twenty-five dollars (\$25.00) nor more than one thousand dollars
 34 (\$1,000) and/or by commitment to jail for not more than six (6) months. The
 35 minimum fine, per animal, fish or bird, for the illegal taking, illegal pos-
 36 session or the illegal waste of the following animals, fish or birds shall be
 37 as indicated below:

38 Animal, Fish or Bird	Minimum Fine
39 Bighorn sheep, mountain goat and moose	\$500
40 Elk	\$300
41 Any other big game animal	\$200
42 Wild turkey, swan and sturgeon	\$200
43 Chinook salmon, wild steelhead and bull trout	\$100
44 Any other game bird, game fish or furbearer	\$ 25

1 (d) Felony Penalty. Any person entering a plea of guilty for, found
2 guilty of or convicted of a felony under the provisions of this title shall be
3 punished in accordance with section 18-112, Idaho Code. Provided further,
4 that the judge hearing the case shall forthwith revoke for life, the hunting,
5 fishing or trapping license and privileges of any person who, within a five
6 (5) year period, pleads guilty to, is found guilty of or is convicted of three
7 (3) or more felony violations of the provisions of this title.

8 (e) License Revocation. Any person entering a plea of guilty or being
9 found guilty or convicted of violating any of the provisions of this title,
10 or who otherwise fails to comply with the requirements of a citation in con-
11 nection with any such offense, may, in addition to any other penalty assessed
12 by the court, have his hunting, fishing, or trapping privileges revoked for
13 such period of time as may be determined by the court not to exceed three (3)
14 years, except that violations classified as felonies under section 36-1401,
15 Idaho Code, or as flagrant violations as defined in subsection (f) of this
16 section, shall authorize the court to impose license revocations for peri-
17 ods of time up to and including life, with said period beginning on the date
18 of conviction, finding of guilt or the entry of the plea of guilty. Pro-
19 vided further, that the magistrate hearing the case shall forthwith revoke
20 the hunting, fishing, or trapping privileges for a period of not less than
21 one (1) year for any of the following offenses:

- 22 1. Taking or possessing upland game birds, migratory waterfowl,
23 salmon, steelhead, sturgeon, or any big game animal during closed sea-
24 son.
- 25 2. Exceeding the daily bag or possession limit of upland game birds, mi-
26 gratory waterfowl or big game animals.
- 27 3. Taking any fish by unlawful methods as set forth in section 36-902 (a)
28 or (c), Idaho Code.
- 29 4. Unlawfully purchasing, possessing or using any license, tag or per-
30 mit as set forth in section 36-405 (c), Idaho Code.
- 31 5. ~~Trespassing in violation of warning signs or failing to depart the~~
32 ~~real property of another after notification as set forth in Violating~~
33 ~~section 36-1603, Idaho Code.~~
- 34 6. The unlawful release of any species of live fish into any public body
35 of water in the state. For purposes of this paragraph, an "unlawful re-
36 lease of any species of live fish" shall mean a release of any species of
37 live fish, or live eggs thereof, in the state without the permission of
38 the director of the department of fish and game; provided, that no per-
39 mission is required when fish are being freed from a hook and released at
40 the same time and place where caught or when crayfish are being released
41 from a trap at the same time and place where caught.

42 Provided further, that the magistrate hearing the case of a first-time
43 hunting violation offender under the age of twenty-one (21) years may re-
44 quire that the offender attend a remedial hunter education course at the of-
45 fender's expense. Upon successful completion of the course, the remainder
46 of the revocation period shall be subject to a withheld judgment ~~so~~ as long
47 as the offender is not convicted of any additional hunting violations during
48 the period. The cost of the course shall be seventy-five dollars (\$75.00) to
49 be paid to the department. The commission shall establish by rule the cur-
50 riculum of the hunter education remedial course.

1 The revocation shall consist of cancellation of an existing license for
2 the required length of time and/or denial of the privilege of purchasing an
3 applicable license for the length of time required to meet the revocation
4 period decreed. In the case of persons pleading guilty, convicted or found
5 guilty of committing multiple offenses, the revocation periods may run
6 consecutively. In the case of pleas of guilty, convictions or findings of
7 guilt involving taking big game animals during closed season or exceeding
8 the daily bag or possession limit of big game, the magistrate hearing the
9 case shall revoke the hunting, fishing or trapping privileges of any person
10 convicted or found guilty of those offenses for a period of not less than one
11 (1) year for each big game animal illegally taken or possessed by the person
12 convicted or found guilty.

13 It shall be a misdemeanor for any person to hunt, fish, or trap or pur-
14 chase a license to do so during the period of time for which such privilege is
15 revoked.

16 For the purpose of this title, the term "conviction" shall mean either a
17 withheld judgment or a final conviction.

18 (f) Flagrant Violations. In addition to any other penalties assessed
19 by the court, the magistrate hearing the case shall forthwith revoke the
20 hunting, fishing or trapping privileges, for a period of not less than one
21 (1) year and may revoke the privileges for a period up to and including the
22 person's lifetime, for any person who enters a plea of guilty, who is found
23 guilty, or who is convicted of any of the following flagrant violations:

24 1. Taking a big game animal after sunset by spotlighting, with use of
25 artificial light, or with a night vision enhancement device.

26 2. Unlawfully taking two (2) or more big game animals within a twelve
27 (12) month period.

28 3. Taking a big game animal with a rimfire or centerfire cartridge
29 firearm during an archery or muzzleloader only hunt.

30 4. Hunting, fishing, trapping or purchasing a license when license
31 privileges have been revoked pursuant to this section or section
32 36-1501, Idaho Code.

33 5. Taking any big game animal during a closed season.

34 6. Any felony violation provided in section 36-1401, Idaho Code.

35 (g) For purposes of the wildlife violator compact, section 36-2301,
36 Idaho Code, et seq., the department shall:

37 1. Suspend a violator's license for failure to comply with the terms of
38 a citation from a party state. A copy of a report of failure to comply
39 from the licensing authority of the issuing state shall be conclusive
40 evidence.

41 2. Revoke a violator's license for a conviction in a party state. A
42 report of conviction from the licensing authority of the issuing state
43 shall be conclusive evidence.

44 (h) Disposition of Fines and Forfeitures. Distribution of fines and
45 forfeitures remitted shall be in accordance with section 19-4705, Idaho
46 Code.

47 SECTION 8. That Section [36-1602](#), Idaho Code, be, and the same is hereby
48 repealed.

1 SECTION 9. That Section 36-1603, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 36-1603. ~~TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION OF WARNING~~
4 ~~SIGNS -- POSTING OF PUBLIC LANDS -- HUNTING, FISHING AND TRAPPING.~~ (a) No
5 person shall enter the real property of another and shoot any weapon or en-
6 ter such property for the purposes of hunting, retrieving wildlife, fishing
7 or trapping, without the permission of the owner or person in charge of the
8 property, which property is either cultivated or:

9 (1) ~~Is posted with "No Trespassing" signs;~~

10 (2) ~~Is posted with a minimum of one hundred (100) square inches of fluo-~~
11 ~~rescent orange, bright orange, blaze orange, safety orange or any simi-~~
12 ~~lar high visibility shade of orange colored paint except that when metal~~
13 ~~fence posts are used, a minimum of eighteen (18) inches of the top of the~~
14 ~~post must be painted a high visibility shade of orange;~~

15 (3) ~~Is posted with other notices of like meaning, spaced at intervals~~
16 ~~of not less than one (1) sign, paint area or notice per six hundred sixty~~
17 ~~(660) feet along such real property; provided that where the geographi-~~
18 ~~cal configuration of the real property is such that entry can reasonably~~
19 ~~be made only at certain points of access, such property is posted suffi-~~
20 ~~ciently for all purposes of this section if said signs, paint or notices~~
21 ~~are posted at such points of access; or~~

22 (4) ~~Is posted with a conspicuous sign where a public road enters the~~
23 ~~real property, through which or along which road the public has a~~
24 ~~right-of-way, stating words substantially similar to "PRIVATE PROP-~~
25 ~~ERTY, NO TRESPASSING OFF (fill in relevant compass direction(s)) SIDE~~
26 ~~OF ROAD NEXT (fill in the distance) MILES," and which is posted with a~~
27 ~~conspicuous sign where the public road exits the real property stating~~
28 ~~words substantially similar to "LEAVING PRIVATE PROPERTY." The post-~~
29 ~~ings shall be placed on the private real property. In lieu of posting~~
30 ~~the compass direction(s), a map depicting the area of private property~~
31 ~~may be displayed on the sign;~~

32 For the purposes of this section, "cultivated" shall mean soil that is being
33 or has been prepared by loosening or breaking up for the raising of crops, or
34 used for the raising of crops, or artificially irrigated pasturage. No per-
35 son shall fail to depart immediately from the real property of another after
36 being notified in writing or orally by the owner of the real property or the
37 owner's authorized agent in violation of section 18-7008, Idaho Code.

38 (b) No person shall post, sign, or indicate that any public lands within
39 this state, not held under an exclusive control lease, are privately owned
40 lands.

41 (c) Remedies. Any violation of this section shall subject the violator
42 to the penalties set forth in sections 36-1401 and 36-1402 (e), Idaho Code.

43 (d) Permission forms.

44 (1) The department shall produce permission forms for a landowner to
45 indicate that a land user has express written permission to use private
46 land. The permission forms produced must contain spaces for all of the
47 information required by section 18-7008 (1) (d), Idaho Code. The permis-
48 sion forms must state clearly that the permission may be revoked at any
49 time by the landowner or his agent.

1 (2) The department shall make the permission forms available upon re-
 2 quest in all of its offices and in every United States department of
 3 agriculture service center located in Idaho, at no charge to any person
 4 owning land in Idaho.

5 (3) The department shall provide information to anyone holding li-
 6 censes, tags or permits to take fish or wildlife in Idaho regarding
 7 owners' rights and sportsmen's duties, at each point of sale and through
 8 all reasonable means, including on the department's website and through
 9 the public media.

10 (4) The restrictions in this section and section 18-7008, Idaho Code,
 11 relating to trespassing shall be stated in all hunting and fishing
 12 proclamations issued by the department.

13 (5) A landowner is not limited to using a permission form provided by
 14 the department under this subsection.

15 SECTION 10. That Section 36-1604, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Pur-
 18 pose. The purpose of this section is to encourage owners of land to make
 19 land, airstrips and water areas available to the public without charge for
 20 recreational purposes by limiting their liability toward persons entering
 21 thereon for such purposes.

22 (b) Definitions. As used in this section:

23 1. "Airstrips" means either improved or unimproved landing areas used
 24 by pilots to land, park, take off, unload, load and taxi aircraft.
 25 Airstrips shall not include landing areas which are or may become el-
 26 igible to receive federal funding pursuant to the federal airport and
 27 airway improvement act of 1982 and subsequent amendments thereto.

28 2. "Land" means private or public land, roads, airstrips, trails,
 29 water, watercourses, irrigation dams, water control structures,
 30 headgates, private or public ways and buildings, structures, and ma-
 31 chinery or equipment when attached to or used on the realty.

32 3. "Owner" means the possessor of a fee interest, a tenant, lessee, oc-
 33 cupant or person in control of the premises.

34 4. "Recreational purposes" includes, but is not limited to, any of
 35 the following activities or any combination thereof: hunting, fish-
 36 ing, swimming, boating, rafting, tubing, camping, picnicking, hiking,
 37 pleasure driving, the flying of aircraft, bicycling, running, playing
 38 on playground equipment, skateboarding, athletic competition, nature
 39 study, ~~water skiing~~ waterskiing, animal riding, motorcycling, snowmo-
 40 biling, recreational vehicles, winter sports, and viewing or enjoying
 41 historical, archeological, scenic, geological or scientific sites,
 42 when done without charge of the owner.

43 (c) Owner Exempt from Warning. An owner of land owes no duty of care
 44 to keep the premises safe for entry by others for recreational purposes, or
 45 to give any warning of a dangerous condition, use, structure, or activity on
 46 such premises to persons entering for such purposes. Neither the installa-
 47 tion of a sign or other form of warning of a dangerous condition, use, struc-
 48 ture, or activity, nor any modification made for the purpose of improving the
 49 safety of others, nor the failure to maintain or keep in place any sign, other

1 form of warning, or modification made to improve safety, shall create lia-
 2 bility on the part of an owner of land where there is no other basis for such
 3 liability.

4 (d) Owner Assumes No Liability. An owner of land or equipment who ei-
 5 ther directly or indirectly invites or permits without charge any person to
 6 use such property for recreational purposes does not thereby:

7 1. Extend any assurance that the premises are safe for any purpose.

8 2. Confer upon such person the legal status of an invitee or licensee to
 9 whom a duty of care is owed.

10 3. Assume responsibility for or incur liability for any injury to per-
 11 son or property caused by an act of omission of such persons.

12 (e) Provisions Apply to Leased Public Land. Unless otherwise agreed in
 13 writing, the provisions of this section shall be deemed applicable to the du-
 14 ties and liability of an owner of land leased to the state or any subdivision
 15 thereof for recreational purposes.

16 (f) Provisions Apply to Land Subject to a Conservation Easement. Un-
 17 less otherwise agreed in writing, the provisions of this section shall be
 18 deemed applicable to the duties and liability of an owner of land subject to a
 19 conservation easement to any governmental entity or nonprofit organization.

20 (g) Owner Not Required to Keep Land Safe. Nothing in this section shall
 21 be construed to:

22 1. Create a duty of care or ground of liability for injury to persons or
 23 property.

24 2. Relieve any person using the land of another for recreational pur-
 25 poses from any obligation which he may have in the absence of this
 26 section to exercise care in his use of such land and in his activities
 27 thereon, or from legal consequences or failure to employ such care.

28 3. Apply to any person or persons who for compensation permit the land
 29 to be used for recreational purposes.

30 (h) User Liable for Damages. Any person using the land of another for
 31 recreational purposes, with or without permission, shall be liable for any
 32 damage to property, livestock or crops which he may cause while on said prop-
 33 erty, in addition to all remedies provided in section 6-202, Idaho Code, in
 34 the event the person has committed a civil trespass.

35 SECTION 11. That Section 36-1108, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 36-1108. CONTROL OF DAMAGE BY PRONGHORN ANTELOPE, ELK, DEER OR MOOSE
 38 -- COMPENSATION FOR DAMAGES. (a) Prevention of depredation shall be a pri-
 39 ority management objective of the department, and it is the obligation
 40 of landowners to take all reasonable steps to prevent property loss from
 41 wildlife or to mitigate damages by wildlife. When any pronghorn antelope,
 42 elk, deer or moose is doing damage to or is destroying any property or is
 43 about to do so, the owner or lessee thereof may make complaint and verbally or
 44 electronically report the facts to the director or his designee who shall,
 45 within seventy-two (72) hours, investigate the conditions complained of. If
 46 it appears that the complaint is well founded and the property of the com-
 47 plainant is being or is likely to be damaged or destroyed by such pronghorn
 48 antelope, elk, deer or moose, the director may:

1 1. Send a representative onto the premises to control, trap, and/or re-
2 move such animals as will stop the damage to said property. Any ani-
3 mals so taken shall remain the property of the state and shall be turned
4 over to the director. The director may provide written authorization
5 for possession of animals so taken.

6 2. Grant properly safeguarded permission to the complainant to con-
7 trol, trap and/or remove such animals. Any animals so taken shall
8 remain the property of the state and shall be turned over to the direc-
9 tor. The director may provide written authorization for possession of
10 animals so taken.

11 3. Make an agreement with the owner or lessee to allow continued use
12 of lands by the animals where damage by them has occurred to stored,
13 growing or matured crops on private property whether owned or leased.
14 The agreement made under the provisions of this subsection may provide
15 for financial compensation to the owner or lessee. If made, financial
16 compensation under the provisions of this subsection shall be governed
17 by the provisions of section 36-115, Idaho Code, and shall not be in
18 addition to any payments for the same crop losses from any other source.
19 Compensation for damages under the provisions of this subsection shall
20 be available for damages done to private lands, whether owned or leased,
21 if the owner or lessee allowed hunters reasonable access to the property
22 or through the property to public lands for hunting purposes during the
23 preceding hunting season or as a measure of response to depredation.
24 This provision shall not negate the provisions of section 36-16023,
25 Idaho Code, relating to the necessity of obtaining permission to en-
26 ter private land. If necessary, the arbitration panel provided for in
27 subsection (b) of this section shall determine the reasonableness of
28 access allowed.

29 (b) 1. In order to establish eligibility for submission of claims for
30 damages, persons suffering crop damages on privately owned or leased
31 land caused by pronghorn antelope, elk, deer or moose must:

32 (A) Notify the department within seventy-two (72) hours of dis-
33 covery of damage.

34 (B) Follow up verbal notification with a written, which may be
35 electronic, notice within twenty (20) days of the discovery of
36 damages.

37 (C) The department shall not be held liable or accountable for any
38 damages occurring more than twenty (20) days prior to the initial
39 notification of damage. However, the department may extend the
40 period up to thirty (30) days under exceptional circumstances.

41 The owner or lessee must have allowed hunters reasonable access to the
42 property or through the property to public lands for hunting purposes
43 during the preceding hunting season or as a measure of response to
44 depredation, provided such access does not impact on their operations,
45 or the claim for damages may be disallowed. Compensation for crop dam-
46 ages claims shall not be in addition to any payments for the same crop
47 losses from any other source and shall not include fence or other types
48 of property damage. While fences and irrigation equipment are not sub-
49 ject to claim for payment, the department is allowed to provide support
50 and assistance, including provision of materials to design, construct,

1 and maintain fences for control of depredation. The notice of damages
2 caused must be in written form, shall be in the form of a claim for dam-
3 ages substantially the same as required by section 6-907, Idaho Code,
4 shall be attested to by the claimant under oath, and the claim shall
5 be at least seven hundred fifty dollars (\$750). The claim shall not be
6 amended after it is filed, provided however, that a claimant may file
7 an additional claim in the event additional damage occurs subsequent
8 to filing the initial claim. The department shall prepare and make
9 available suitable forms for notice and claim for damages. Claims may
10 be submitted only for the fiscal year (July 1 through June 30) in which
11 they occurred, with allowance for submission within the first sixty
12 (60) days of the following fiscal year if the claim occurred within the
13 last sixty (60) days of the previous fiscal year. Any person submitting
14 a fraudulent claim shall be prosecuted for a felony as provided in sec-
15 tion 18-2706, Idaho Code. For purposes of this subsection, crop damages
16 shall mean damage to plants grown or stored for profit and exclude orna-
17 mental plants.

18 2. Upon receipt by the department, the department shall review the
19 claim, and if approved, pay it as provided in section 36-115, Idaho
20 Code, or order it paid as provided in section 36-115, Idaho Code.
21 Failure on the part of the owner or lessee to allow on-site access for
22 inspection and investigation of alleged losses shall void the claim for
23 damages.

24 3. In the event the owner or lessee and the department fail to agree on
25 the amount of damages within fifteen (15) business days of the written
26 claim, either party may elect to retain the services of an independent
27 certified insurance adjuster licensed in the state of Idaho to view the
28 affected property and determine the amount of damages. In the event the
29 owner or lessee and the department fail to agree on the amount of dam-
30 ages and neither party elects to retain the services of an independent
31 certified insurance adjuster, provisions of subsection (b)4. of this
32 section shall apply. The independent certified adjuster shall complete
33 his review and determination within twenty (20) days from the date he
34 is retained, and will report his determination in writing by certified
35 mail to the department and to the owner or lessee. Neither the owner or
36 lessee, nor the department, shall disturb the affected property prior
37 to review and determination by the independent insurance adjuster.
38 Costs associated with the services of the independent insurance ad-
39 juster shall be divided equally between the owner or lessee and the
40 department, subject to reapportionment of the costs by an arbitration
41 panel pursuant to the provisions of subsection (b)4. of this section.
42 If the department, or the owner or lessee rejects the determination of
43 the adjuster, they shall notify the other party in writing of the rejec-
44 tion within five (5) business days of receipt of the adjuster's determi-
45 nation. In the event that either party rejects the adjuster's determi-
46 nation, the provisions of subsection (b)4. of this section shall apply.
47 4. Within five (5) business days of a rejection of an adjuster's deter-
48 mination of damages or failure of the owner or lessee and the department
49 to agree on damages when a certified insurance adjuster is not used, the
50 director must convene an arbitration panel. To convene an arbitration

1 panel, the director must, within five (5) business days, appoint the
2 department's representative and notify the landholder of the appoint-
3 ment. The landholder(s) shall, within the next five (5) business days
4 following such notice from the department, appoint his representative
5 and notify the department of the appointment. Within the next five (5)
6 business days, the department representative and the landholder must
7 mutually appoint the third arbitrator. The arbitration panel shall
8 consist of three (3) members, as follows:

9 (A) The director of the department of fish and game or his de-
10 signee;

11 (B) The owner or his designee, or the lessee or his designee;

12 (C) One (1) member selected by the two (2) members above.

13 The panel shall convene within thirty (30) days of the selection of the
14 third arbitrator, and render its decision within fourteen (14) days
15 after the hearing. When convened, the arbitration panel shall have
16 the same authority to make on-site inspections as the department. The
17 owner or lessee shall be responsible for payment of the expenses of his
18 appointee; the director shall pay the expenses of his appointee from
19 the expendable big game depredation fund; and the expenses of the third
20 member shall be a joint responsibility of the owner or lessee, and the
21 department. Provided however, the panel is authorized to review the
22 costs associated with retaining the independent insurance adjuster and
23 to determine whether those costs should instead be borne solely by the
24 owner or lessee, solely by the department, or be apportioned between
25 the owner or lessee and the department. In cases where an independent
26 insurance adjuster was used, the party electing to use the adjuster
27 shall assume the insurance adjuster's determination of damage as their
28 estimate of damage. The panel shall consider the claim submitted by the
29 owner or lessee, and the estimate of damages submitted by the depart-
30 ment, and shall select one (1) amount or the other as being the closest
31 to the actual damages sustained by the claimant. The arbitration panel
32 shall report its decision in writing to both the owner or lessee and to
33 the department within ten (10) days of the decision, and the decision
34 of the panel shall be binding on the owner or lessee and the department.
35 The fish and game advisory committee shall develop guidelines to govern
36 arbitration procedures in accordance with chapter 52, title 67, Idaho
37 Code.

38 (c) Any claim received by the department under the provisions of sub-
39 section (b) of this section must be processed by the department within sixty
40 (60) calendar days of receipt. If the claim is approved for payment, pay-
41 ment must be made within forty-five (45) calendar days of such approval. Any
42 damage claim determination by an independent insurance adjuster pursuant to
43 subsection (b)3. of this section, accepted by the parties, must be paid by
44 the department within forty-five (45) calendar days of the determination.
45 If the claim is arbitrated, the arbitration must be completed within one hun-
46 dred eighty (180) calendar days of filing the claim for such damages.

47 SECTION 12. Section 3 of this act shall apply to causes of action accru-
48 ing on or after July 1, 2018.