LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature Second Regular Session - 2018

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 658

BY WAYS AND MEANS COMMITTEE

AN ACT
RELATING TO TRESPASS; TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 6-202, IDAHO CODE, TO PROVIDE FOR ACTIONS FOR CIVIL TRESPASS, TO PROVIDE DEFINITIONS, TO PROVIDE FOR ACTS CONSTITUTING CIVIL TRESPASS, TO PROVIDE FOR PENALTIES AND TO PROVIDE FOR EXCLUSIONS; REPEALING SECTION 6-202A, IDAHO CODE, RELATING TO DEFINITIONS OF TERMS; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 6, IDAHO CODE, TO PROVIDE FOR THE LIABILITY AND DUTY OF A LAND POSSESSOR TO A TRESPASSER AND TO PROVIDE FOR THE APPLICABILITY OF THE ATTRACTIVE NUISANCE COMMON LAW DOCTRINE; REPEALING SECTION 18-7008, IDAHO CODE, RELATING TO TRESPASS; AMENDING CHAPTER 70, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7008, IDAHO CODE, TO PROVIDE FOR CRIMINAL TRESPASS, TO PROVIDE DEFINITIONS, TO PROVIDE FOR ACTS CONSTITUTING CRIMINAL TRESPASS AND CRIMINAL TRESPASS WITH DAMAGE, TO PROVIDE FOR PENALTIES AND TO PROVIDE FOR EXCLUSIONS; REPEALING SECTION 18-7011, IDAHO CODE, RELATING TO CRIMINAL TRESPASS; AMENDING SECTION 19-4705, IDAHO CODE, TO PROVIDE FOR THE DISPOSITION OF FINES; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE FOR A VIolation OF TRESPASSING FOR THE PURPOSE OF HUNTING, FISHING OR TRAPPING AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 36-1602, IDAHO CODE, RELATING TO HUNTING ON CERTAIN LANDS WITHOUT PERMISSION; AMENDING SECTION 36-1603, IDAHO CODE, TO PROHIBIT TRESPASSING WHILE HUNTING, FISHING AND TRAPPING, TO PROVIDE REMEDIES AND TO AUTHORIZE PERMISSION FORMS; AMENDING SECTION 36-1604, IDAHO CODE, TO PROVIDE FOR THE APPLICABILITY OF CERTAIN REMEDIES WITH RESPECT TO THE LIABILITY OF THOSE USING THE LAND OF ANOTHER PERSON FOR RECREATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1108, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE FOR THE ACCRUAL OF ACTIONS.

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

SECTION 1. LEGISLATIVE INTENT. The Legislature of the State of Idaho makes the following findings and declares the following statement of intent and legislative purpose:

(1) Under Section 1, Article I, of the Constitution of the State of Idaho, "acquiring, possessing and protecting property" is an inalienable right. The right to own real property and to exclude others from that property according to law is fundamental to our rights as citizens and has been upheld repeatedly by the United States Supreme Court.

(2) Section 23, Article I of the Idaho Constitution also protects the right to hunt and fish, but that right expressly does not include "a right to trespass on private property."

(3) The Legislature finds that trespassing on private property has become a serious problem for landowners throughout the state. While many in-
individuals respect private property rights, landowners report a significant
number of persons who blatantly disregard the rights of property owners and
frequently cause damage to private property, including cut fences, ruined
crops, vandalism and theft.

(4) The trespass laws of the State of Idaho have been insufficient to
deter trespassing and have offered inadequate penalties when trespassers
are prosecuted.

(5) Moreover, the existing trespass laws are a confusing, inconsistent
and constitutionally suspect patchwork of laws. They impose significant
posting burdens on landowners, without reducing trespassing. The poor
construction of the laws of trespass hinders the effective arrest and pros-
secution of trespassers.

(6) It is the intent of the Legislature in passing this act to culti-
vate a new culture of respect for private property rights and a renewal of the
neighborly ways that have been a hallmark of our state.

SECTION 2. That Section 6-202, Idaho Code, be, and the same is hereby
amended to read as follows:

6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this
section:
(a) "Crops" means field crops including, but not limited to, grains,
feed crops, legumes, fruits and vegetables.
(b) "Cultivated land" means:
   (i) Land whose soil is loosened or broken up for the raising of
crops;
   (ii) Land used for the raising of crops; or
   (iii) Pasturage that is artificially irrigated.
(c) "Damage" means any injury or damage to real or personal property
and includes, without limitation, any of the following actions, when
conducted without lawful authority, the consent of the landowner or his
agent, or a valid license:
   (i) Cutting down or carrying off any wood, underbrush, tree or
timber, or girdling or otherwise injuring any tree or timber on the
land of another;
   (ii) Severing from the property of another anything attached
thereto, or the produce thereof;
   (iii) Digging, taking or carrying away any earth, soil or stone
from the property of another;
   (iv) Tearing down or otherwise damaging any fence on the land of
another, or opening any gate, bar or fence of another and leaving
it open, or using the corral or corrals of another;
   (v) Dumping trash or covering up in any manner the property of
another;
   (vi) The unprovoked, intentional killing or injuring of a domes-
tic animal of another on his property;
   (vii) Removing, mutilating, damaging or destroying any "no tres-
passing" signs or markers of similar meaning;
   (viii) Going through or driving a motor vehicle, as defined in sec-
tions 49-114 and 49-123, Idaho Code, into, upon, over or through
any cultivated lands; or
(ix) Injuring or killing livestock.

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

(e) "Navigable streams" shall have the meaning set forth in section 36-1601, Idaho Code.

(f) "Permission" means written authorization from the owner or his agent to enter upon private land, which shall include the signature of the owner or his agent, the name of the person being given permission, the appropriate dates that the permission is valid and a general description of the property.

(2)(a) Acts constituting civil trespass. Any person who, without permission of the owner, or the owner's agent, willfully and intentionally enters or remains upon the real property of another person which property is posted with "No Trespassing" signs or other notices of like meaning, spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along such real property; or who willfully and intentionally cuts down or carries off any wood or underwood, tree or timber, or girdling, or otherwise willfully and intentionally injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated ground; or on the commons or public grounds of or in any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor or fifty dollars ($50.00), plus a reasonable attorney's fee which shall be taxed as costs, in any civil action brought to enforce the terms of this act if the plaintiff prevails without permission commits a civil trespass.

(b) Acts constituting civil trespass with damage. A person commits a civil trespass with damage when he enters and remains on the real property of another without permission, knowing or with reason to know that his presence is not permitted, and causes damage to real or personal property in excess of one thousand dollars ($1,000). A person has reason to know that his presence is not permitted on real property that meets any of the following descriptions:

(i) The property is reasonably associated with a residence or place of business;

(ii) The property is cultivated;

(iii) The property is fenced or otherwise enclosed in a manner that a reasonable person would recognize as delineating a private property boundary. Provided, however, if the property adjoins or is contained within public lands, the fence line adjacent to public land is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at the corners of the fence adjoining public land and at all navigable streams, roads, gates and rights-of-way entering the private land from the public land, and is posted in a manner that a reasonable person would be put on notice that it is private land; or

(iv) The property is unfenced and uncultivated but is posted with conspicuous "no trespassing" signs or bright orange or fluores-
cent paint at all property corners and boundaries where the property intersects navigable streams, roads, gates and rights-of-way entering the land, and is posted in a manner that a reasonable person would be put on notice that it is private land.

(3) Remedies.
(a) Civil trespass. Any person found liable for a civil trespass pursuant to subsection (2)(a) of this section shall be liable for the following damages and penalties:

(i) The greater of:
   1. A civil fine or penalty of five hundred dollars ($500); or
   2. The amount of actual damages caused by the trespass;

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

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

(b) Civil trespass with damage. Any person found liable for a civil trespass with damage pursuant to subsection (2)(b) of this section shall be liable for the following damages and penalties:

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

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

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

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

(4) All damages and penalties awarded pursuant to this section shall be remitted to the owner of the land trespassed upon, or, if personal property was injured while trespassing, the owner of that personal property, or both.

(5) Posting of navigable streams shall not prohibit access to navigable streams below the high-water mark pursuant to section 36-1601, Idaho Code.

(6) Subject to any rights or authorities described in subsection (7) of this section, a landowner or his agent may revoke permission granted under this section to another to enter or remain upon his property at any time, for any reason, orally, in writing, or by any other form of notice reasonably apparent to the permitted person or persons.

(7) A person has not committed the act of civil trespass under this section for entering or remaining upon real property if the person entered or remained on the property pursuant to any of the following rights or authorities:

(a) An established right of entry or occupancy of the real property in question, including, without limitation:
(i) An invitation, whether express or implied, to enter or remain on real property including, without limitation, the right to enter property that is, at the time, open to the public, if the person is in compliance with lawful conditions imposed on access;
(ii) A license to enter or remain on real property; or
(iii) A lease, easement, contract, privilege or other legal right to enter, remain upon, possess or use the real property;
(b) A lawful authority to enter onto or remain upon the real property in question, including, without limitation:
(i) Any law enforcement officer during the course and scope of fulfilling his lawful duties;
(ii) Any paramedic, firefighter or other emergency personnel during the course and scope of fulfilling his lawful duties; or
(iii) Any licensed professional otherwise authorized to enter or remain on the real property during the course and scope of fulfilling his duties; or
(c) Any other person with a legally prescribed right to enter or remain upon the real property in question.
(8) Examples of the exclusions in subsection (7) of this section include, without limitation, a customer entering and remaining in a store during business hours who has not been asked to depart by the property owner or his agent; a person knocking on a front door of a property that is not posted; a meter reader in the scope and course of his employment; a postal employee delivering mail or packages; power company personnel fixing downed power lines; a bail bondsman arresting a person who is in violation of a bail contract; a tenant in compliance with a valid lease; and the owner or operator of any right-of-way or easement for any ditch, canal or other conduit, acting pursuant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.
(9) The exclusions set forth in this section shall not relieve any person of civil or criminal liability pursuant to other applicable law for causing damage while entering or remaining on the property in question.

SECTION 3. That Section 6-202A, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Title 6, 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 6, Idaho Code, and to read as follows:

CHAPTER 31
LIABILITY OF LAND POSSESSOR TO TRESPASSER

6-3101. DUTY OF LAND POSSESSOR TO TRESPASSER. A possessor of any interest in real property, including an owner, lessee or other lawful occupant, owes no duty of care to a trespasser, except to refrain from intentional or willful and wanton acts that cause injury to the trespasser.

6-3102. ATTRACTIVE NUISANCE. Nothing in this chapter shall affect the common law doctrine of attractive nuisance.
6-3103. APPLICABILITY. This chapter does not create or increase the liability of any possessor of real property and does not affect any other statutory or common law immunities from or defenses to civil liability to which a possessor of real property may be entitled.

SECTION 5. That Section 18-7008, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Chapter 70, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-7008, Idaho Code, and to read as follows:

18-7008. CRIMINAL TRESPASS -- DEFINITIONS AND ACTS CONSTITUTING. (1) Definitions. As used in this section:
(a) "Crops" means field crops including, but not limited to, grains, feed crops, legumes, fruits and vegetables.
(b) "Cultivated land" means:
(i) Land whose soil is loosened or broken up for the raising of crops;
(ii) Land used for the raising of crops; or
(iii) Pasturage that is artificially irrigated.
(c) "Damage" means any injury or damage to real or personal property and includes, without limitation, any of the following actions, when conducted without lawful authority, the consent of the landowner or his agent, or a valid license:
(i) Cutting down or carrying off any wood, underbrush, tree or timber, or girdling or otherwise injuring any tree or timber on the land of another;
(ii) Severing from the property of another anything attached thereto, or the produce thereof;
(iii) Digging, taking or carrying away any earth, soil or stone from the property of another;
(iv) Tearing down or otherwise damaging any fence on the land of another person, or opening any gate, bar or fence of another person and leaving it open, or using the corral or corrals of another person;
(v) Dumping trash or covering up in any manner the property of another person;
(vi) The unprovoked, intentional killing or injuring of a domestic animal on another on his property;
(vii) Removing, mutilating, damaging or destroying any "no trespassing" signs or markers of similar meaning;
(viii) Going through or driving a motor vehicle, as defined in sections 49-114 and 49-123, Idaho Code, into, upon, over or through any cultivated lands; or
(ix) Injuring livestock.
(d) "Enter" or "enters" means going upon or over real property either in person or by causing any object, substance or force to go upon or over real property.
(e) "Navigable streams" shall have the meaning set forth in section 36-1601, Idaho Code.
(f) "Permission" means written authorization from the owner or his agent to enter upon private land, which shall include the signature of the owner or his agent, the name of the person being given permission, the appropriate dates that the permission is valid and a general description of the property.

(2) Acts constituting criminal trespass.
(a) A person commits criminal trespass when he enters and remains on the real property of another without permission, knowing or with reason to know that his presence is not permitted. A person has reason to know that his presence is not permitted on real property that meets any of the following descriptions:
   (i) The property is reasonably associated with a residence or place of business;
   (ii) The property is cultivated;
   (iii) The property is fenced or otherwise enclosed in a manner that a reasonable person would recognize as delineating a private property boundary. Provided, however, if the property adjoins or is contained within public lands, the fence line adjacent to public land is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at the corners of the fence adjoining public land and at all navigable streams, roads, gates and rights-of-way entering the private land from the public land, and is posted in a manner that a reasonable person would be put on notice that it is private land; or
   (iv) The property is unfenced and uncultivated but is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at all property corners and boundaries where the property intersects navigable streams, roads, gates and rights-of-way entering the land, and is posted in a manner that a reasonable person would be put on notice that it is private land.

(b) Every person who commits a criminal trespass as provided by this section and who causes damage to real or personal property in excess of one thousand dollars ($1,000) while trespassing is guilty of criminal trespass with damage and is guilty of a misdemeanor, except as provided in subsection (3)(b)(iii) of this section.

(3) Penalties.
(a) Penalties for criminal trespass.
   (i) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(a) of this section for the first time:
      1. May be sentenced to jail for a period of no more than six (6) months; and
      2. Shall be fined in an amount no less than five hundred dollars ($500) and no more than one thousand dollars ($1,000).
   (ii) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(a) of this section for a second time within five (5) years:
      1. May be sentenced to jail for a period of no more than six (6) months;
2. Shall be fined in an amount no less than one thousand five hundred dollars ($1,500) and no more than three thousand dollars ($3,000); and
3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603(a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36, Idaho Code, suspended for a period of one (1) year.

(iii) Any person who pleads guilty to or is found guilty of a violation of subsection (2) (a) of this section, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of subsection (2) of this section within ten (10) years, notwithstanding the form of the judgments or withheld judgments:
   1. May be sentenced to jail for a period no more than one (1) year;
   2. Shall be fined an amount no less than five thousand dollars ($5,000) and no more than ten thousand dollars ($10,000); and
3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603(a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36, Idaho Code, suspended for a period of no more than five (5) years.

(b) Penalties for criminal trespass with damage.
   (i) Any person who pleads guilty to or is found guilty of a violation of subsection (2) (b) of this section for the first time:
   1. May be sentenced to jail for a period of no more than six (6) months; and
   2. Shall be fined in an amount no less than one thousand five hundred dollars ($1,500) and no more than five thousand dollars ($5,000).

   (ii) Any person who pleads guilty to or is found guilty of a violation of subsection (2) (b) of this section for a second time within five (5) years:
   1. May be sentenced to jail for a period of no more than six (6) months;
   2. Shall be fined in an amount no less than five thousand dollars ($5,000) and no more than ten thousand dollars ($10,000); and
3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603(a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36, Idaho Code, suspended for a period of one (1) year.

   (iii) Any person who pleads guilty to or is found guilty of a violation of subsection (2) (b) of this section, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of subsection (2) of this section within ten (10) years, notwithstanding the form of the judgments or withheld judgments, is guilty of a felony and:
1. Shall be sentenced to the custody of the state board of correction for a period of no less than one (1) year and no more than five (5) years;
2. Shall be fined in an amount no less than fifteen thousand dollars ($15,000) and no more than fifty thousand dollars ($50,000); and
3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603(a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36, Idaho Code, suspended for a period of no less than five (5) years.

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

(4) Posting of navigable streams shall not prohibit access to navigable streams below the high-water mark pursuant to section 36-1601, Idaho Code.

(5) Subject to any rights or authorities described in subsection (6) of this section, a landowner or his agent may revoke permission granted under this section to another to enter or remain upon his property at any time, for any reason, orally, in writing, or by any other form of notice reasonably apparent to the permitted person or persons.

(6) A person shall not be guilty of trespass under this section for entering or remaining upon real property if the person entered or remained on the property pursuant to any of the following rights or authorities:

(a) An established right of entry or occupancy of the real property in question, including, without limitation:
   (i) An invitation, whether express or implied, to enter or remain on real property including, without limitation, the right to enter property that is, at the time, open to the public, if the person is in compliance with lawful conditions imposed on access;
   (ii) A license to enter or remain on real property; or
   (iii) A lease, easement, contract, privilege or other legal right to enter, remain upon, possess or use the real property;

(b) A lawful authority to enter onto or remain upon the real property in question, including, without limitation:
   (i) Any law enforcement officer during the course and scope of fulfilling his lawful duties;
   (ii) Any paramedic, firefighter or other emergency personnel during the course and scope of fulfilling his lawful duties; or
   (iii) Any licensed professional otherwise authorized to enter or remain on the real property during the course and scope of fulfilling his duties; or

(c) Any other person with a legally prescribed right to enter or remain upon the real property in question.

(7) Examples of the exclusions in subsection (6) of this section include, without limitation: a customer entering and remaining in a store during business hours who has not been asked to depart by the property owner or his agent; a person knocking on a front door of a property that is not posted; a meter reader during the scope and course of his employment; a postal employee delivering mail or packages; power company personnel fixing downed
power lines; a bail bondsman arresting a person who is in violation of a bail
contract; a tenant pursuant to a valid lease; and the owner or operator of any
right-of-way or easement for any ditch, canal or other conduit, acting pur-
suant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.

(8) The exclusions set forth in this section shall not relieve any per-
son of civil or criminal liability pursuant to other applicable law for caus-
ing damage while entering or remaining on the property in question.

SECTION 7. That Section 18-7011, Idaho Code, be, and the same is hereby
repealed.

SECTION 8. That Section 19-4705, Idaho Code, be, and the same is hereby
amended to read as follows:

19-4705. PAYMENT OF FINES AND FORFEITURES -- SATISFACTION OF JUDGMENT
-- DISPOSITION -- APPORTIONMENT. (1) Except as otherwise provided in subsec-
tion (2) of this section:

(a) All fines and forfeitures collected pursuant to the judgment of
any court of the state shall be remitted to the court in which the judg-
ment was rendered. The judgment shall then be satisfied by entry in the
docket of the court. The clerk of the court shall daily remit all fines
and forfeitures to the county auditor who shall at the end of each month
apportion the proceeds according to the provisions of this chapter.
Other existing laws regarding the disposition of fines and forfeitures
are hereby repealed to the extent such laws are inconsistent with the
provisions of this chapter except as provided in section 49-1013(5),
Idaho Code.
(b) Fines and forfeitures remitted for violations of fish and game
laws shall be apportioned two and one-half percent (2 1/2%) to the
state treasurer for deposit in the state general fund, ten percent
(10%) to the search and rescue account, twenty-two and one-half percent
(22 1/2%) to the district court fund and sixty-five percent (65%) to the
fish and game fund.
(c) Fines and forfeitures remitted for violations of state motor ve-
Hicle laws, for violation of state driving privilege laws, and for
violation of state laws prohibiting driving while under the influence
of alcohol, drugs or any other intoxicating substances, shall be ap-
portioned ten percent (10%) to the state treasurer of which eighty-six
percent (86%) shall be deposited to the state general fund and fourteen
percent (14%) shall be deposited to the peace officers standards and
training fund authorized in section 19-5116, Idaho Code, forty-five
percent (45%) to the state treasurer for deposit in the highway dis-
tribution account, twenty-two and one-half percent (22 1/2%) to the
district court fund and twenty-two and one-half percent (22 1/2%) to the
state treasurer for deposit in the public school income fund; provided,
however, that fines and forfeitures remitted for violation of state mo-
tor vehicle laws, for violation of state driving privilege laws, and for
violation of state laws prohibiting driving while under the influence
of alcohol, drugs or any other intoxicating substances, where an arrest
is made or a citation is issued by a city law enforcement official, or by
a law enforcement official of a governmental agency under contract to
provide law enforcement services for a city, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose officer made the arrest or issued the citation.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game laws, or motor vehicle laws, or state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this chapter shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred except in cases where a duly designated officer of any city police department or city law enforcement official has made the arrest for any such violation, in which case ninety percent (90%) shall be apportioned to the city whose officer made the arrest.

(h) Fines and forfeitures remitted for violations involving registrations of motorcycles or motor-driven cycles used off highways, snowmobiles, or use of winter recreation parking areas shall be apportioned ten percent (10%) to the state treasurer of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the general fund of the county or city whose law enforcement official issued the citation.
(i) Fines and forfeitures remitted for violations of overweight laws as provided in section 49-1013(3), Idaho Code, shall be deposited one hundred percent (100%) into the highway distribution account.

(j) Fines remitted for violations of section 18-7008, Idaho Code, shall be apportioned ten percent (10%) to the district court fund, sixty-five percent (65%) to the county where the trespass occurred for appropriation to the sheriff's office, and twenty-five percent (25%) to the Idaho rangeland resources commission for expanded education programs regarding private property rights and land user responsibility.

(2) Any fine or forfeiture remitted for any misdemeanor violation for which an increase in the maximum fine became effective on or after July 1, 2005, shall be apportioned as follows:

(a) Any funds remitted, up to the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation, shall be apportioned according to the applicable provisions of subsection (1) of this section; and

(b) Any other funds remitted, in excess of the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation, shall be remitted to the state treasurer and shall be deposited in the drug court, mental health court and family court services fund as set forth in section 1-1625, Idaho Code.

(3) As used in this section, the term "city law enforcement official" shall include an official of any governmental agency which is providing law enforcement services to a city in accordance with the terms of a contract or agreement, when such official makes the arrest or issues a citation within the geographical limits of the city and when the contract or agreement provides for payment to the city of fines and forfeitures resulting from such service.

SECTION 9. That Section 36-1402, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

(c) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules or proclamations promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:
(d) Felony Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a felony under the provisions of this title shall be punished in accordance with section 18-112, Idaho Code. Provided further, that the judge hearing the case shall forthwith revoke for life, the hunting, fishing or trapping license and privileges of any person who, within a five (5) year period, pleads guilty to, is found guilty of or is convicted of three (3) or more felony violations of the provisions of this title.

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

1. Taking or possessing upland game birds, migratory waterfowl, salmon, steelhead, sturgeon, or any big game animal during closed season.
2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.
3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.
4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.
5. Trepassing in violation of warning signs or failing to depart the real property of another after notification as set forth in section 36-1603, Idaho Code.
6. The unlawful release of any species of live fish into any public body of water in the state. For purposes of this paragraph, an "unlawful release of any species of live fish" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being released from a trap at the same time and place where caught.
Provided further, that the magistrate hearing the case of a first-time hunting violation offender under the age of twenty-one (21) years may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The cost of the course shall be seventy-five dollars ($75.00) to be paid to the department. The commission shall establish by rule the curriculum of the hunter education remedial course.

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

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

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

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

1. Taking a big game animal after sunset by spotlighting, with use of artificial light, or with a night vision enhancement device.
2. Unlawfully taking two (2) or more big game animals within a twelve (12) month period.
3. Taking a big game animal with a rimfire or centerfire cartridge firearm during an archery or muzzleloader only hunt.
4. Hunting, fishing, trapping or purchasing a license when license privileges have been revoked pursuant to this section or section 36-1501, Idaho Code.
5. Taking any big game animal during a closed season.
6. Any felony violation provided in section 36-1401, Idaho Code.

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

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.
2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.
(h) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

SECTION 10. That Section 36-1602, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 36-1603, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) Is posted with "No Trespassing" signs;
(2) Is posted with a minimum of one hundred (100) square inches of fluorescent orange, bright orange, blaze orange, safety orange or any similar high visibility shade of orange colored paint except that when metal fence posts are used, a minimum of eighteen (18) inches of the top of the post must be painted a high visibility shade of orange;
(3) Is posted with other notices of like meaning, spaced at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet along such real property, provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this section if said signs, paint or notices are posted at such points of access; or
(4) Is posted with a conspicuous sign where a public road enters the real property, through which or along which road the public has a right-of-way, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF (fill in relevant compass direction(s)) SIDE OF ROAD NEXT (fill in the distance) MILES," and which is posted with a conspicuous sign where the public road exits the real property stating words substantially similar to "LEAVING PRIVATE PROPERTY." The postings shall be placed on the private real property. In lieu of posting the compass direction(s), a map depicting the area of private property may be displayed on the sign.

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

(b) No person shall post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.
(c) Remedies. Any violation of this section shall subject the violator to the penalties set forth in sections 36-1401 and 36-1402(e), Idaho Code.

(d) Permission forms.

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

(2) The department shall make the permission forms available on the department's website, in all fish and game offices and in the sheriff's office in each county in the state of Idaho, at no charge to any person owning land in Idaho.

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

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

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

SECTION 12. That Section 36-1604, Idaho Code, be, and the same is hereby amended to read as follows:

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

(b) Definitions. As used in this section:
1. "Airstrips" means either improved or unimproved landing areas used by pilots to land, park, take off, unload, load and taxi aircraft. Airstrips shall not include landing areas which are or may become eligible to receive federal funding pursuant to the federal airport and airway improvement act of 1982 and subsequent amendments thereto.
2. "Land" means private or public land, roads, airstrips, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty.
3. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
4. "Recreational purposes" includes, but is not limited to, any of the following activities or any combination thereof: hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, the flying of aircraft, bicycling, running, playing on playground equipment, skateboarding, athletic competition, nature study, water skiing, waterskiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying.
historical, archeological, scenic, geological or scientific sites, when done without charge of the owner.

(c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the premises safe for entry by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety shall create liability on the part of an owner of land where there is no other basis for such liability.

(d) Owner Assumes No Liability. An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
1. Extend any assurance that the premises are safe for any purpose.
2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

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

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

(g) Owner Not Required to Keep Land Safe. Nothing in this section shall be construed to:
1. Create a duty of care or ground of liability for injury to persons or property.
2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from legal consequences or failure to employ such care.
3. Apply to any person or persons who for compensation permit the land to be used for recreational purposes.

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

SECTION 13. That Section 36-1108, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

2. Grant properly safeguarded permission to the complainant to control, trap and/or remove such animals. Any animals so taken shall remain the property of the state and shall be turned over to the director. The director may provide written authorization for possession of animals so taken.

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

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

   (A) Notify the department within seventy-two (72) hours of discovery of damage.

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

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

The owner or lessee must have allowed hunters reasonable access to the property or through the property to public lands for hunting purposes
during the preceding hunting season or as a measure of response to 
depredation, provided such access does not impact on their operations, 
or the claim for damages may be disallowed. Compensation for crop dam-
ages claims shall not be in addition to any payments for the same crop 
losses from any other source and shall not include fence or other types 
of property damage. While fences and irrigation equipment are not sub-
ject to claim for payment, the department is allowed to provide support 
and assistance, including provision of materials to design, construct, 
and maintain fences for control of depredation. The notice of damages 
caused must be in written form, shall be in the form of a claim for dam-
ages substantially the same as required by section 6-907, Idaho Code, 
shall be attested to by the claimant under oath, and the claim shall 
be at least seven hundred fifty dollars ($750). The claim shall not be 
amended after it is filed, provided however, that a claimant may file 
an additional claim in the event additional damage occurs subsequent 
to filing the initial claim. The department shall prepare and make 
available suitable forms for notice and claim for damages. Claims may 
be submitted only for the fiscal year (July 1 through June 30) in which 
they occurred, with allowance for submission within the first sixty 
(60) days of the following fiscal year if the claim occurred within the 
last sixty (60) days of the previous fiscal year. Any person submitting 
a fraudulent claim shall be prosecuted for a felony as provided in sec-
tion 18-2706, Idaho Code. For purposes of this subsection, crop damages 
shall mean damage to plants grown or stored for profit and exclude orna-
mental plants.

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

3. In the event the owner or lessee and the department fail to agree on 
the amount of damages within fifteen (15) business days of the written 
claim, either party may elect to retain the services of an independent 
certified insurance adjuster licensed in the state of Idaho to view the 
affected property and determine the amount of damages. In the event the 
owner or lessee and the department fail to agree on the amount of dam-
ages and neither party elects to retain the services of an independent 
certified insurance adjuster, provisions of subsection (b)4. of this 
section shall apply. The independent certified adjuster shall complete 
his review and determination within twenty (20) days from the date he 
is retained, and will report his determination in writing by certified 
mail to the department and to the owner or lessee. Neither the owner or 
lessee, nor the department, shall disturb the affected property prior 
to review and determination by the independent insurance adjuster. 
Costs associated with the services of the independent insurance ad-
juster shall be divided equally between the owner or lessee and the 
department, subject to reapportionment of the costs by an arbitration 
panel pursuant to the provisions of subsection (b)4. of this section. 
If the department, or the owner or lessee rejects the determination of
the adjuster, they shall notify the other party in writing of the rejection within five (5) business days of receipt of the adjuster's determination. In the event that either party rejects the adjuster's determination, the provisions of subsection (b) of this section shall apply.

4. Within five (5) business days of a rejection of an adjuster's determination of damages or failure of the owner or lessee and the department to agree on damages when a certified insurance adjuster is not used, the director must convene an arbitration panel. To convene an arbitration panel, the director must, within five (5) business days, appoint the department's representative and notify the landholder of the appointment. The landholder(s) shall, within the next five (5) business days following such notice from the department, appoint his representative and notify the department of the appointment. Within the next five (5) business days, the department representative and the landholder must mutually appoint the third arbitrator. The arbitration panel shall consist of three (3) members, as follows:

(A) The director of the department of fish and game or his designee;
(B) The owner or his designee, or the lessee or his designee;
(C) One (1) member selected by the two (2) members above.

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

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

SECTION 14. SEVERABILITY. The provisions of this act are hereby de-
clared 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 por-
tions of this act.

SECTION 15. Section 4 of this act shall apply to causes of action accru-
ing on or after July 1, 2018.