

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 389

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO UNCONTROLLED FIRES; AMENDING SECTION 38-107, IDAHO CODE, TO
2 REVISE PROVISIONS REGARDING UNCONTROLLED FIRES; AMENDING CHAPTER 1,
3 TITLE 38, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 38-131B, IDAHO
4 CODE, TO ESTABLISH PROVISIONS REGARDING THE USE OF STATE RESOURCES TO
5 SUPPRESS FIRES ON FEDERAL LAND; AND DECLARING AN EMERGENCY.
6

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

8 SECTION 1. That Section 38-107, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 38-107. UNCONTROLLED FIRES A NUISANCE -- ABATEMENT -- CIVIL LIABIL-
11 ITY. (1) Any forest or range fire on any land within the state of Idaho, re-
12 gardless of ownership status, that is burning out of control or without ad-
13 equiate and proper precautions having been taken to prevent its spread, is
14 hereby declared a public nuisance, by reason of its menace to life and/or
15 property. Any person responsible through his conduct, acts and/or control
16 of property or operations for either the starting or the existence of such
17 fire is hereby required to make a reasonable effort to control or extinguish
18 it immediately, without awaiting instructions from the director of the de-
19 partment of lands or a fire warden. The director of the department of lands
20 or any fire warden may summarily abate the nuisance thus constituted by con-
21 trolling or extinguishing such fire and the person willfully or negligently
22 responsible for the starting or existence of such fire shall be liable for
23 the costs incurred by the state or its authorized agencies in controlling
24 or extinguishing the same. The amount of such costs shall be recovered by
25 a civil action prosecuted in the name of the state of Idaho and any amounts
26 recovered shall be paid to the state treasurer for deposit to the forest pro-
27 tection fund. Civil liability provided for herein shall be exclusive of and
28 in addition to any criminal penalties otherwise provided.

29 (2) Notwithstanding any other provision of law, in a civil action
30 against any person, legal entity, state or political subdivision for forest
31 or range fire caused by a negligent or unintentional act, which act was not
32 willful or intentional under section 6-202, Idaho Code, the real and per-
33 sonal property damage is limited to:

34 (a) The reasonable costs for controlling or extinguishing the forest or
35 range fire;

36 (b) Economic damages; and

37 (c) Either (i) the diminution of fair market value of the real and per-
38 sonal property resulting from the fire, or (ii) the actual and tangible
39 restoration costs associated with bringing the damaged real and per-
40 sonal property back to its pre-injured state to the extent that such
41 actual and tangible restoration costs are reasonable and practical.

1 As used in this subsection, "economic damages" means objectively verifiable
2 monetary loss including, but not limited to, out-of-pocket expenses, loss of
3 earnings, loss of use of property or loss of business or employment oppor-
4 tunities. As further used in this subsection, "fair market value" means the
5 amount a willing buyer would pay a willing seller in an arms-length trans-
6 action when both parties are fully informed about all of the advantages and
7 disadvantages of the property and neither is acting under any compulsion to
8 buy or sell, as determined by a state certified appraiser, who is qualified
9 to appraise the property. Claims against the state or a political subdivi-
10 sion shall remain subject to the requirements of chapter 9, title 6, Idaho
11 Code, and damages against the state or a political subdivision shall be the
12 amount set forth in chapter 9, title 6, Idaho Code, as limited in this subsec-
13 tion.

14 (3) Notwithstanding any other provision of law, civil actions brought
15 pursuant to this section shall be barred by a statute of limitations after
16 ten (10) years.

17 SECTION 2. That Chapter 1, Title 38, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 38-131B, Idaho Code, and to read as follows:

20 38-131B. DEFICIENCY WARRANTS FOR COSTS OF FIRE SUPPRESSION ON FEDERAL
21 LANDS. (1) It is the policy of the state of Idaho that any forest or range fire
22 constituting a nuisance pursuant to section 38-107, Idaho Code, on any land
23 within the state of Idaho be summarily abated as quickly and efficiently as
24 possible.

25 (2) In the event that the governor declares an emergency exists because
26 of a fire burning uncontrolled on federal lands that threatens the health,
27 safety, and welfare of Idaho citizens or that is imminently threatening the
28 property of the state of Idaho, any political subdivision thereof, or any
29 resident thereof, then the governor may take immediate action by directing
30 state resources to assist in controlling and extinguishing the fire, includ-
31 ing authorizing the issuance of deficiency warrants. When so authorized,
32 the state controller shall draw deficiency warrants against the general
33 fund.

34 (3) The cost incurred by the state of Idaho in controlling or extin-
35 guishing the fire shall be recovered by a civil action prosecuted in the name
36 of the state of Idaho by the attorney general. The funds recovered shall be
37 returned to the general fund to offset the amount of the deficiency warrant.

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