

GENERAL LAWS
OF THE
STATE OF IDAHO



PASSED AND PUBLISHED BY
THE FIRST EXTRAORDINARY SESSION OF THE
SIXTY-FIFTH IDAHO LEGISLATURE

Convened August 24, 2020
Adjourned August 26, 2020

Idaho Official Directory and Roster of State Officials and
Members of State Legislature follows the Index.

Chairman Lakey
Senate Judiciary & Rules
Chairman Chaney
House Judiciary, Rules & Administration

PROCLAMATION

WHEREAS, the SARS-CoV-2 virus that originated in China and causes the disease COVID-19 has caused untold misery and devastation throughout the world, including in the United States and in Idaho; and

WHEREAS, the health and safety of all Idahoans is the greatest priority of our state and its leaders; and

WHEREAS, citizen participation in our elections by voting is essential to our republic; and

WHEREAS, the White House has recently reported that several Idaho counties are in the "Red Zone" for COVID-19 due to a high rate of new cases per 100,000 and a test positivity rate above 10 percent, including some of Idaho's most populous counties; and

WHEREAS, the COVID-19 pandemic has significantly decreased the availability of possible polling locations and willingness of poll workers to serve on Election Day; and

WHEREAS, I am informed by the Secretary of State that on average approximately 4,000 poll workers help carry out the general election and that the median age of those poll workers is 70 years old; and

WHEREAS, I am informed by the Secretary of State that over half of those who customarily serve as poll workers do not plan to do so for the 2020 general election; and

WHEREAS, I am informed by the Secretary of State that an unprecedented number of Idahoans will vote absentee in this year's general election, which will require those ballots to be processed and counted by the county clerks' offices while simultaneously preparing for and operate polling places for in person voting on Election Day; and

WHEREAS, there is an urgent need to address and ensure the privacy, integrity and security of Idaho's election process; and

WHEREAS, the existence of COVID-19 in Idaho and in the United States has significantly harmed Idaho's economy, caused the loss of many Idaho jobs, and caused our schools, universities, and other institutions to temporarily close; and

WHEREAS, the United States and the State of Idaho have enacted numerous laws and programs to help workers, professional educators, businesses, health care workers, patients, and citizens respond to and recover from the negative impacts caused by COVID-19; and

WHEREAS, safely reopening Idaho's economy is crucial to Idaho's recovery from the COVID-19 pandemic and will enable Idaho's workers to get back to work and Idaho's students to get back to school; and

WHEREAS, the COVID-19 pandemic has created unprecedented uncertainty as to liability due to the existence and spread of COVID-19 in Idaho; and

WHEREAS, small and large businesses, schools, colleges and universities, and religious, philanthropic and other non-profit institutions confront the risk of litigation accusing them of negligently exposing employees, customers, students, and worshipers to coronavirus. Health care workers face the threat of lawsuits arising from their efforts to fight the virus; and

WHEREAS, establishing temporary and consistent standards to govern liability for certain tort claims related to COVID-19 will help Idaho's economy recover in a safe and prudent manner and will encourage planning, care,

and appropriate risk management by small and large businesses, schools, colleges and universities, religious, philanthropic and other non-profit institutions, and health care providers; and

WHEREAS, the standards set by this special session must be carefully tailored to the crisis caused by the COVID-19 pandemic and extend no further than necessary to meet this unique crisis. Those who do not act in good faith to respond safely to the COVID-19 pandemic should not be immune from liability; and

WHEREAS, article IV, section 9 of the Constitution of the State of Idaho empowers the Governor, on extraordinary occasions, to convene the Legislature by proclamation; and

WHEREAS, the Idaho Legislature has requested a special session to address issues caused by the COVID-19 pandemic that require immediate action; and

WHEREAS, I have determined that the existence and spread of COVID-19 in Idaho is such an extraordinary occasion that necessitates convening a special session of the Idaho Legislature; and

WHEREAS, the Idaho Legislature formed working groups that have studied those issues caused by the COVID-19 pandemic and recommended specific bills to be considered at a special session of the Idaho Legislature; and

WHEREAS, article III, section 9 of the Constitution of the State of Idaho gives each house of the Legislature the authority to identify and implement the safety protocols, including capacity limits, it deems necessary to conduct its proceedings within its respective chambers, offices, and committee rooms.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do by this Proclamation convene the 65th Idaho Legislature in Extraordinary Session in the legislative chambers at the Capitol in Boise City, Ada County, Idaho, at the hour of 10:00 A.M. on the 24th day of August, 2020 for the following enumerated purpose and no other:

To consider the passage of RS28046 regarding absentee voting during the pandemic, RS28045 regarding in person polling locations during the pandemic, and RS28049 regarding civil liability, copies of which are attached hereto.

The Extraordinary Session of the Legislature convened by this Proclamation shall have no power to legislate on any subjects other than those specified herein.

I HEREBY DIRECT AND REQUIRE that a copy of this proclamation be delivered to the Lieutenant Governor, to each of the members of the 65th Idaho Legislature and to the Constitutional Officers of Idaho at the earliest practicable time.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 19th day of August in the year of our Lord two thousand and twenty.

/s/ Brad Little
GOVERNOR OF THE STATE OF IDAHO

/s/ Lawrence Denney
SECRETARY OF STATE

CHAPTER 1
(S.B. No. 1001, As Amended)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-1003, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE ISSUANCE OF ABSENTEE BALLOTS; AMENDING SECTION 34-1007, IDAHO CODE, TO REVISE PROVISIONS REGARDING COUNTING ABSENTEE BALLOTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-1003, Idaho Code, be, and the same is hereby amended to read as follows:

34-1003. ISSUANCE OF ABSENTEE BALLOT. (1) Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of the county clerk's office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, the elector shall arrange for the applicant to vote by absent elector's ballot.

(2) In the case of requests for primary ballots:

(a) Except as provided in paragraph (b) of this subsection, an elector who has designated a political party affiliation shall receive a primary ballot for that political party.

(b) An elector who has designated a political party affiliation pursuant to section 34-404, Idaho Code, may receive the primary election ballot of a political party other than the political party such elector is affiliated with if such other political party has provided notification to the secretary of state that identifies the political party such elector is affiliated with, as provided for in section 34-904A(2)(b), Idaho Code.

(c) An "unaffiliated" elector shall receive the primary ballot for the political party which the elector designated in the elector's application for an absentee ballot pursuant to section 34-1002, Idaho Code. Provided however, that a political party's ballot shall not be provided to an "unaffiliated" elector where that political party has not elected to allow "unaffiliated" electors to vote in such party's primary election pursuant to section 34-904A, Idaho Code.

(d) If an "unaffiliated" elector does not indicate a choice of political party's primary ballot, the elector shall receive a nonpartisan ballot.

(3) The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine or other electronic transmission. Validly requested absentee ballots for candidates for federal office, where the request is received at least forty-five (45) days before an election, shall be sent ~~not~~ no later than forty-five (45) days before that election to all electors who are entitled to vote by absentee ballot.

(4) Pursuant to the uniformed and overseas citizens absentee voting act (UOCAVA, 52 U.S.C. 20301 et seq., as amended) the secretary of state shall establish procedures for the transmission of blank absentee ballots by mail and by electronic transmission for all electors who are entitled to vote by absentee ballot under the uniformed and overseas citizens absentee voting act, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically. If no preference is stated, the ballots shall be transmitted by mail. The secretary of state shall establish procedures for transmitting such ballots in a manner that shall protect the security and integrity of such ballots and the privacy of the elector throughout the process of transmission.

(5) A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness, it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-six (46) days prior to the election. The clerk shall notify such witnesses of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

(6) A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

(7) An elector physically unable to mark such elector's own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of the elector's own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

(8) Notwithstanding any other provision of this section, for any election that takes place prior to December 31, 2020, the following provisions shall apply:

(a) Validly requested absentee ballots by uniformed and overseas voters, pursuant to the uniformed and overseas citizens absentee voting act, where the request is received at least forty-five (45) days before an election, shall be sent no later than forty-five (45) days before that election; and

(b) For any other validly requested absentee ballots that are received at least thirty (30) days before an election by electors who are entitled to vote by absentee ballot and are not within the provisions of paragraph (a) of this subsection, such ballots shall be sent no later than thirty (30) days before the election.

SECTION 2. That Section 34-1007, Idaho Code, be, and the same is hereby amended to read as follows:

34-1007. TRANSMISSION OF COUNTING ABSENTEE BALLOTS TO POLLS. (1) On In those counties that count ballots at the polls, upon receipt of such absent elector's ballot or ballots, the officer receiving them shall forthwith enclose the same, unopened in a carrier envelope endorsed with the name and official title of such officer and the words: "absent electors' ballot to be opened only at the polls." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which the elector resides and shall deliver the ballot or ballots to the judges with such official ballots.

(2) In those counties which that count ballots at a central location, absentee ballots that are received may, in the discretion of the county clerk, be retained in a secure place in the clerk's office and such ballots shall be added to the precinct returns at the time of ballot tabulation. Provided, however, for any election that takes place prior to December 31,

2020, absentee ballots may be opened and scanned beginning seven (7) days prior to election day. If the absentee ballots are opened prior to election day, the ballots shall be securely maintained in a nonproprietary electronic access-controlled room under twenty-four (24) hour nonproprietary video surveillance that is livestreamed to the public and which video must be archived for at least ninety (90) days following the election. The ballots shall be boxed and secured in the same access-controlled room each day after being opened or scanned. A minimum of two (2) election officials must be present whenever absentee ballots are accessed. No results shall be tabulated for absentee ballots until the polls close on the day of the election held prior to December 31, 2020.

(3) The clerk shall deliver to the polls a list of those absentee ballots received to record in the official poll book that the elector has voted.

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

Approved August 27, 2020

CHAPTER 2
(H.B. No. 6)

AN ACT

RELATING TO THE CORONAVIRUS LIMITED IMMUNITY ACT; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 34, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE LIMITED IMMUNITY FROM CERTAIN LIABILITY, TO PROVIDE EXCEPTIONS, AND TO PROVIDE APPLICABILITY; DECLARING AN EMERGENCY; AND PROVIDING A SUNSET DATE.

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

SECTION 1. 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 34, Title 6, Idaho Code, and to read as follows:

CHAPTER 34
CORONAVIRUS LIMITED IMMUNITY ACT

6-3401. SHORT TITLE. This chapter shall be known and may be cited as the "Coronavirus Limited Immunity Act."

6-3402. DEFINITIONS. As used in this chapter:

(1) "Coronavirus" means:

(a) Severe acute respiratory syndrome coronavirus 2;

(b) The disease caused by severe acute respiratory syndrome coronavirus 2; or

(c) Any subsequently identified mutation, modification, or strain of coronavirus if the transmission of said virus among humans rises to the level of an epidemic or pandemic and qualifies for an emergency declaration under applicable Idaho law.

(2) "Person" means any entity recognized in this state and shall include but not be limited to an individual, corporation, limited liability company, partnership, trust, association, church or religious organization, city, county, school district, college, university or other institution of higher education, or other unit of local government. However, "person" shall not include any Idaho public health district; the

federal government or any of its agencies; the state of Idaho or any of its agencies, except colleges, universities, and other institutions of higher education; nor any foreign government or foreign jurisdiction.

6-3403. LIMITED IMMUNITY FROM LIABILITY. (1) Subject to the other provisions of this section, a person is immune from civil liability for damages or an injury resulting from exposure of an individual to coronavirus.

(2) Immunity as described in this section shall not apply to acts or omissions that constitute an intentional tort or willful or reckless misconduct as defined in section 6-1601, Idaho Code.

(3) Nothing in this chapter shall be construed to modify the application of title 72, Idaho Code, worker's compensation and related laws of the industrial commission.

(4) The immunity provided in this section is in addition to any other immunity protection that may apply in state or federal law.

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

SECTION 3. The provisions of Section 1 of this act shall be null, void, and of no force and effect on and after July 1, 2021.

Approved August 27, 2020

CHAPTER 3
(H.B. No. 1)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-1006, IDAHO CODE, TO PROVIDE FOR THE RIGHT OF CERTAIN ELECTORS TO VOTE IN PERSON NOTWITHSTANDING CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-1006, Idaho Code, be, and the same is hereby amended to read as follows:

34-1006. COUNTY CLERKS SHALL PROVIDE ONE OR MORE "ABSENT ELECTORS' VOTING PLACE." (1) Each county clerk shall provide one (1) or more "absent electors' polling place(s)" as determined necessary by each county. Each polling place shall be provided with voting booths and other necessary supplies as provided by law. Except as provided in section 34-308, Idaho Code, every elector shall always be provided the opportunity to vote in person in an election, notwithstanding any declaration of emergency, extreme emergency, or disaster emergency by the governor.

(2) Electioneering is prohibited at an "absent electors' polling place" as provided in section 18-2318, Idaho Code.

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

Approved September 1, 2020

CERTIFICATE OF SECRETARY OF STATE

UNITED STATES OF AMERICA)
) ss.
STATE OF IDAHO)

I, LAWRENCE DENNEY, Secretary of the State of Idaho, do hereby certify that the foregoing printed pages contain true, full, and correct and literal copies of all the general laws and resolutions passed by the Sixty-fifth Legislature of the State of Idaho, First Extraordinary Session thereof, which convened on August 24, 2020, and which adjourned on August 26, 2020, as they appear in the enrolled acts and resolutions on file in this office, all of which are published by authority of the Laws of the State of Idaho.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise City, the Capital of Idaho, this fourth day of September, 2020.

Secretary of State

When errors appear in the enrolled bills received from the Legislature at the office of the Secretary of State, this office has no authority to correct them.

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