GENERAL AND SPECIAL LAWS
OF THE
STATE OF IDAHO

PASSED BY
THE FIRST REGULAR SESSION OF THE
FORTY-FIRST IDAHO LEGISLATURE
Convened January 11, 1971
Adjourned March 20, 1971

AND THE FIRST EXTRAORDINARY SESSION OF
THE FORTY-FIRST IDAHO LEGISLATURE
1971
Convened March 22, 1971
Adjourned April 8, 1971

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

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

P E T E T. C E N A R R U S A
Secretary of State
Boise, Idaho

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Caldwell, Idaho
AN ACT

APPROPRIATING ANY UNEXPENDED MONEYS REMAINING IN APPROPRIATIONS MADE TO THE FORTIETH LEGISLATURE TO THE FORTY-FIRST LEGISLATURE; AUTHORIZING THE PAYMENT OF OPERATING COSTS AND EXPENSES; EXEMPTING THE ACT FROM CHAPTER 36, TITLE 67, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. Any unexpended moneys in any appropriations made to the Fortieth Legislature are hereby reappropriated to the Forty-first Legislature, and all expenses, including salaries, wages, subsistence, travel, and other necessary expenses of members and employees, shall be paid from this appropriation.

SECTION 2. Upon the certificate of the presiding officer of the House or Senate, the state auditor is hereby authorized and directed to draw his warrant on the general fund in payment of such salaries, wages, subsistence, travel, and other necessary expenses of officers, members and employees of the legislature as are authorized.

SECTION 3. The appropriation herein made is expressly exempt from chapter 36, title 67, Idaho Code.
SECTION 4. 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 January 18, 1971

CHAPTER 2
(H. B. No. 7)

AN ACT
REPEALING CHAPTER 3, TITLE 39, IDAHO CODE, RELATING TO LOCAL BOARDS OF HEALTH; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 3, Title 39, Idaho Code, be, and the same is hereby repealed.

SECTION 2. This act shall be in full force and effect on and after June 30, 1971.

Approved February 2, 1971.

CHAPTER 3
(H. B. No. 10)

AN ACT
AMENDING SECTION 33-1225, IDAHO CODE, RELATING TO TUBERCULOSIS EXAMINATIONS FOR SCHOOL PERSONNEL, BY ELIMINATING THE REQUIREMENT OF REPEATED INTRADERMAL TUBERCULIN SKIN TESTS FOR SCHOOL EMPLOYEES WHOSE TEST RESULTS ARE NEGATIVE, AND PROVIDING IN LIEU THEREOF, THAT IN MOST CIRCUMSTANCES NO REPEAT SKIN TEST IS REQUIRED UNLESS THE EMPLOYEE BECOMES A KNOWN CONTACT OF AN ACTIVE CASE OF TUBERCULOSIS, PROVIDING THAT TEST RECORDS BE TRANSFERABLE FROM SCHOOL DISTRICT TO SCHOOL DISTRICT, AND PROVIDING THAT THE BOARD OF TRUSTEES
MAY ACCEPT AN ANNUAL REPORT OF A CHEST X RAY FROM
EMPLOYEES WHO CHOOSE NOT TO TAKE THE OFFERED SKIN
TEST, AND THAT SUCH X RAY REPORTS SHALL BE FURNISHED
AT THE EMPLOYEE'S EXPENSE.

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

SECTION 1. That Section 33-1225, Idaho Code, be, and the same is
hereby amended to read as follows:

33-1225. SCHOOL PERSONNEL — EXAMINATIONS FOR
TUBERCULOSIS. It shall be unlawful for public school authorities to
employ teachers, custodians, bus drivers, food handlers, nurses or other
persons who might come in direct contact with school students, when such
personnel have tuberculosis in an infectious stage. Every board of trustees
shall require of all such employees an initial intradermal tuberculin skin test
for tuberculosis within one (1) year from the date this act becomes effective,
unless the employee can produce evidence of a skin test having been done
and read as negative within the preceding three (3) year period. If the initial
intradermal skin test is negative then the skin test shall be repeated each
third year as long as the employee remains negative, and the report furnished
to the board of trustees. If the initial intradermal skin test is negative, or if
there is an adequately documented history of a negative tuberculin skin test
applied and read after July 1, 1967, no repeat skin tests are required unless
the employee becomes a known contact of an active case of tuberculosis.
Records of previous testing are transferrable from school district to school
district and should be accepted.

If the intradermal skin test is positive, a chest X ray shall be made to
determine whether the disease may be in an infectious state, and the report
submitted to the board of trustees, or their medical advisor. If the disease is
not in an infectious state the employee shall be eligible for service but such
an employee shall annually thereafter submit to a chest X ray to determine
his continued eligibility for such employment, and furnish an appropriate
report to the board of trustees. Such X ray reports shall be made only by
physicians holding an unlimited license to practice medicine. The cost of
such skin tests and X rays shall be borne by the board of trustees. An
employee may be tested at his own expense if he so chooses.

Recognizing that individuals may have legitimate medical
contraindication to having a skin test, and that certain medications may
interfere with the skin test reaction, the report of a satisfactory chest X ray
may be accepted in lieu of the skin test by the board of trustees. and that some employees may choose not to take the offered skin test, the board of trustees may accept the report of a satisfactory chest X ray done annually as early in the school year as possible. However, if it is at the employee’s option that the skin test is not done, the employee should furnish annually the X ray report to the board of trustees at his or her own expense, not at the expense of the board of trustees unless they choose to accept the bill.

Approved February 2, 1971.

CHAPTER 4
(H. B. No. 78)

AN ACT
RELATING TO THE EMPLOYMENT SECURITY LAW; REPEALING SECTION 72-1367A, IDAHO CODE; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1367A, IDAHO CODE, PROVIDING FOR A PROGRAM OF EXTENDED UNEMPLOYMENT COMPENSATION BENEFITS; DEFINING TERMS; PROVIDING THAT, EXCEPT WHEN RESULTS WOULD BE INCONSISTENT WITH OTHER PROVISIONS OF THIS ACT, THE PROVISIONS OF THIS ACT APPLYING TO CLAIMS FOR REGULAR BENEFITS, APPLY TO CLAIMS FOR EXTENDED BENEFITS; PROVIDING AN INDIVIDUAL SHALL BE ELIGIBLE FOR EXTENDED BENEFITS ONLY IF THE DIRECTOR FINDS HE IS AN EXHAUSTEE AND HAS SATISFIED THE REQUIREMENTS FOR REGULAR BENEFITS; PROVIDING EXTENDED BENEFIT AMOUNT TO BE EQUAL TO WEEKLY BENEFIT AMOUNT PAYABLE DURING APPLICABLE BENEFIT YEAR; PROVIDING EXTENDED BENEFIT AMOUNT SHALL BE THE LEAST OF EITHER FIFTY PERCENT OF THE TOTAL AMOUNT OF REGULAR BENEFITS IN APPLICABLE BENEFIT YEAR OR THIRTEEN TIMES WEEKLY BENEFIT AMOUNT PAYABLE FOR A WEEK OF TOTAL UNEMPLOYMENT IN APPLICABLE BENEFIT YEAR; PROVIDING THAT BENEFITS PAID PURSUANT TO THIS ACT AS PROVIDED HEREIN SHALL BE REDUCED BY THE
AMOUNT OF BENEFITS PAID OR BEING PAID TO CLAIMANT UNDER THE PROVISIONS OF SUCH LAW AS EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT; PROVIDING BEGINNING AND TERMINATION OF EXTENDED BENEFIT PERIOD AND REQUIRING THE DIRECTOR SHALL MAKE APPROPRIATE ANNOUNCEMENT OF BEGINNING AND TERMINATION OF SAID PERIOD AND REQUIRING DIRECTOR TO MAKE REQUIRED COMPUTATIONS IN ACCORDANCE WITH THE REGULATIONS OF THE UNITED STATES SECRETARY OF LABOR; PROVIDING EXTENDED BENEFITS NOT TO BE CHARGED TO EMPLOYER’S ACCOUNT FOR CHARGEABILITY PURPOSES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 72-1367A, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 72-1367A, Idaho Code, and to read as follows:

72-1367A. EXTENDED UNEMPLOYMENT COMPENSATION BENEFITS. - The state of Idaho hereby adopts an extended unemployment compensation benefits program to be governed by and interpreted by the provisions of this section.

(a) Definitions. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which
(A) begins with the third week after whichever of the following weeks occurs first;
   1. a week for which there is a national "on" indicator; or
   2. a week for which there is a state "on" indicator; and
(B) ends with either of the following weeks, whichever occurs later;
   1. the third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or
   2. the thirteenth consecutive week of such period;
Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state; and
Provided, further, that within the period beginning on the effective date of this amendment and ending on December 31, 1971, an extended benefit period may become effective and be terminated in this state solely by reason of a state “on” and a state “off” indicator, respectively.

(2) There is a “national ‘on’ indicator” for a week if the United States secretary of labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths (4.5) per cent.

(3) There is a “national ‘off’ indicator” for a week if the United States secretary of labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths (4.5) per cent.

(4) There is a “state ‘on’ indicator” for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act:

(A) equaled or exceeded one hundred twenty (120) per cent of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; and

(B) equaled or exceeded four (4) per cent.

(5) There is a “state ‘off’ indicator” for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act:

(A) was less than one hundred twenty (120) per cent of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or

(B) was less than four (4) per cent.

(6) “Rate of insured unemployment,” for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing:

(A) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent
thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by

(B) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to exservicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to exservicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including benefits payable to federal civilian employees and exservicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(B) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(C) has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, the automotive products trade act of
1965 and such other federal laws as are specified in regulations
issued by the United States secretary of labor; and has not
received and is not seeking unemployment benefits under the
unemployment compensation law of the Virgin Islands or of
Canada; but if he is seeking such benefits and the appropriate
agency finally determines that he is not entitled to benefits under
such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state,
approved by the United States secretary of labor under section 3304 of
the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims
for, and the payment of, extended benefits. Except when the result would
be inconsistent with the other provisions of this section, as provided in the
regulations of the director, the provisions of this act which apply to claims
for, or the payment of, regular benefits shall apply to claims for, and the
payment of, extended benefits.

(c) Eligibility requirements for extended benefits. An individual shall
be eligible to receive extended benefits with respect to any week of
unemployment in his eligibility period only if the director finds that with
respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of
regular benefits that are applicable to individuals claiming extended
benefits, including not being subject to a disqualification for the receipt
of benefits.

(d) Weekly extended benefit amount. The weekly extended benefit
amount payable to an individual for a week of total unemployment in his
eligibility period shall be an amount equal to the weekly benefit amount
payable to him during his applicable benefit year.

(e) Total extended benefit amount. The total extended benefit amount
payable to an eligible individual with respect to his applicable benefit year
shall be the least of the following amounts:

(1) fifty (50) per cent of the total amount of regular benefits which
were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable
to him under this act for a week of total unemployment in the
applicable benefit year;
(3) provided that the amount so determined shall be reduced by the total amount of extended benefits paid (or being paid) to the individual under the provision of section 72-1367A, Idaho Code, as such law existed prior to the effective date of this act, for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(f)(1) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national “on” indicator, or an extended benefit period is to be terminated in this state as a result of a state “off” indicator or state and national “off” indicators, the director shall make an appropriate public announcement;

(2) computations required by the provisions of subsection (a)(6) shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(g) Irrespective of any of the other provisions of this act, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

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 February 3, 1971.

CHAPTER 5
(S. B. No. 1004)

AN ACT
RELATING TO ELECTIONS, STATING THE PURPOSE OF THE ACT; AMENDING CHAPTER 7, TITLE 34, IDAHO CODE, BY ADDING A NEW SECTION 34-703, IDAHO CODE, PROVIDING THAT CANDIDATES FOR OFFICES BE NOMINATED AT PRIMARY CONVENTIONS; ADDING A NEW SECTION 34-704, IDAHO CODE, PROVIDING THAT PERSONS ENTITLED TO BECOME A CANDIDATE FILE DECLARATIONS OF CANDIDACY AND PARTY AFFILIATION OR AS AN INDEPENDENT; ADDING A NEW SECTION 34-705, IDAHO CODE, PROVIDING THAT CANDIDATES
FOR COUNTY OR PRECINCT OFFICES FILE DECLARATIONS OF CANDIDACY WITH THE COUNTY CLERK AND THAT CANDIDATES FOR STATE AND FEDERAL OFFICES FILE THEIR DECLARATIONS OF CANDIDACY WITH THE SECRETARY OF STATE; ADDING A NEW SECTION 34-706, IDAHO CODE, PROVIDING THAT THE COUNTY CLERKS SHALL CERTIFY CANDIDACIES TO RESPECTIVE COUNTY PARTY CENTRAL COMMITTEES, THAT THE SECRETARY OF STATE SHALL CERTIFY LEGISLATIVE CANDIDATES TO LEGISLATIVE DISTRICT CENTRAL COMMITTEES, THAT THE SECRETARY OF STATE SHALL CERTIFY STATE AND FEDERAL OFFICE CANDIDATES TO THE STATE CENTRAL COMMITTEES OF THE RESPECTIVE PARTIES, AND THAT INDEPENDENT CANDIDATES SHALL BE PLACED ON THE PRIMARY BALLOT AND BE REQUIRED TO RECEIVE TEN PERCENT OF THE TOTAL VOTES CAST FOR THAT OFFICE BEFORE BEING PLACED ON THE GENERAL ELECTION BALLOT; AMENDING SECTION 34-707, IDAHO CODE, BY PROVIDING THAT A STATE CONVENTION SHALL BE HELD BY EACH POLITICAL PARTY BETWEEN JUNE 15 AND JUNE 30 OF EACH ELECTION YEAR AND THAT THE STATE CENTRAL COMMITTEE CHAIRMAN SHALL PRESIDE AND GIVE NOTICE TO LEGISLATIVE DISTRICT AND COUNTY CENTRAL COMMITTEES; AMENDING SECTION 34-2421, IDAHO CODE, BY PROVIDING THAT WHEN THE ELECTION BOARD DETERMINES IT IS IMPrACTICAL TO REPAIR OR REPLACE A DAMAGED VOTING MACHINE IT SHALL ALLOW PAPER BALLOTS, AND PROVIDING FOR THEIR HANDLING; AMENDING CHAPTER 24, TITLE 34, IDAHO CODE, BY ADDING A NEW SECTION 34-2422, IDAHO CODE, PROVIDING THAT THE ELECTION BOARD SHALL DECLARE THE POLLS CLOSED AT THE DESIGNATED HOUR BUT ALLOW THOSE WAITING THEIR TURN TO VOTE TO CAST THEIR BALLOTS, AND PROVIDING THAT DELIVERY OF VOTED BALLOTS TO THE COUNTERS MAY BE AUTHORIZED DURING VOTING HOURS, BUT COUNTS CANNOT BE DISCLOSED UNTIL AFTER 8:00 P.M. OF THE ELECTION DAY.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. The purpose of this bill is to correct inadvertent omissions which occurred in the engrossing process after House Bill No. 555 was amended in the House in the Second Regular Session of the Fortieth Idaho Legislature. The bill, a substantial rewrite of the election laws, was initially properly printed. The bill was passed by the House as amended and sent to be engrossed. The engrosser omitted the following material from the bill sent to the Senate. The erroneous bill passed the Senate and was signed by the Governor. The omitted material thus did not become law. The error was later discovered and the code commissioners then compiled the statutes in such a way as to facilitate adding the text which constitutes sections 2 through 8 of this bill.

SECTION 2. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 34-703, Idaho Code, and to read as follows:

34-703. NOMINATION AT PRIMARY. — All candidates for United States senator and representative in congress and all elective state, district, county and precinct offices, at regular elections shall be nominated at the primary elections and shall comply with the provisions of this act.

SECTION 3. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 34-704, Idaho Code, and to read as follows:

34-704. DECLARATION OF CANDIDACY. — Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each candidate for office shall file his declaration of candidacy in the proper office between June 1 and 5 p.m. June 7 prior to the primary election. All candidates shall declare their party affiliation or that they are independent candidates in their declaration of candidacy.

SECTION 4. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 34-705, Idaho Code, and to read as follows:

34-705. WITH WHOM DECLARATIONS FILED. — All candidates for county or precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state.

SECTION 5. That Chapter 7, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and
designated as Section 34-706, Idaho Code, and to read as follows:

34-706. CERTIFICATION OF CANDIDATES TO PARTIES — INDEPENDENTS. — Within five (5) days after the deadline for filing declarations of candidacy the county clerk shall certify to the county central committee of each political party a list of the candidates for county and precinct offices of their political party which have filed and are qualified.

Within five (5) days after the deadline for filing declarations of candidacy the secretary of state shall certify to the legislative district central committee of each political party a list of the legislative candidates of their political party which have filed and are qualified.

Within seven (7) days after the deadline for filing declarations of candidacy the secretary of state shall certify to the state central committee of each political party a list of the candidates which have filed for federal and state offices under the party name and are qualified for their official endorsement at their respective state assemblies.

Independent candidates for any office filing declarations of candidacy shall have their names placed on the primary ballot as provided by law; provided, however, that independent candidates shall be required to receive ten percent (10%) of the total votes cast for that particular office at the primary election or their name shall not be placed on the general election ballot.

SECTION 6. That Section 34-707, Idaho Code, be, and the same is hereby amended to read as follows:

34-707. PARTY CONVENTIONS. — A state convention shall be held by each political party not later than June 30 nor before June 15 in each election year at a time and place determined by the state central committee. The state central committee chairman shall preside and cause notice to be given to each legislative district central committee and each county central committee at the earliest possible date.

Each state convention shall write and adopt rules and regulations governing the conduct of their respective conventions.

At their convention each political party may:

(1) Adopt and write a party platform.

(2) Elect any desired officers not otherwise provided for by law.

(3) In the year of presidential elections (a) elect delegates to the national convention in the manner prescribed by national party rules; (b) elect a national committeeman and a national committeewoman; and (c) select presidential electors.
(4) Indorse and select national and state candidates for the primary elections.

(5) Adopt rules, regulations and directives regarding party policies, practices and procedures.

SECTION 7. That Section 34-2421, Idaho Code, be, and the same is hereby amended to read as follows:

34-2421. PROCEDURE IF A VOTING MACHINE BECOMES INOPERATIVE. — (1) If any voting machine used in any election precinct, during or before the time the polls are opened, becomes damaged so as to render it inoperative in whole or in part, an election board clerk immediately shall notify the election officer charged with the care of the machine.

(2) If possible, the election officer so notified shall repair the machine at once or substitute another machine for the damaged machine.

(3) If no other machine can be procured for use at the election and the damaged machine cannot be repaired in time for further use at the election, or where in the discretion of a majority of the members of the election board it is impracticable to use the machine, the election board shall permit the voters to use paper ballots prepared as in cases where paper ballots are used. The paper ballots shall be furnished to the election board by the county clerk. The paper ballots shall be issued, voted and deposited in ballot boxes in as nearly the same manner as provided by law, except that the paper ballots shall not be tallied and returned by the election board. Instead, these paper ballots shall be delivered to the county clerk for his tally and canvass.

SECTION 8. That Chapter 24, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 34-2422, Idaho Code, and to read as follows:

34-2422. CLOSING OF POLLS — DELIVERY OF BALLOTS TO CLERK BEFORE POLLS CLOSED. — (1) At the hour for closing the polls, the election board shall declare the polls of the election closed and shall not permit any further voting. However, electors who are, at the hour of closing, within the polling room or awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes.

(2) At any time prior to the closing of the polls provision may be made for the delivery of voted ballots to the county clerk or the clerk of a city, district or other political subdivision for counting. If such procedure is adopted, the result of this early count shall not be released to the public until after 8:00 p.m. of election day.

Approved February 3, 1971.
AN ACT
AMENDING CHAPTER 13, TITLE 50, IDAHO CODE, BY THE
ADDITION OF A NEW SECTION 50-1306A, IDAHO CODE,
PROVIDING FOR THE VACATION OF PLATS INSIDE A CITY OR
WITHIN ONE MILE THEREOF BY THE CITY COUNCIL, AND
ESTABLISHING PROCEDURES FOR SUCH VACATION.

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

SECTION 1. That Chapter 13, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 50-1306A, Idaho Code, and to read as follows:

50-1306A. VACATION OF PLATS — PROCEDURE. — When any person, persons, firm, association or corporation may desire to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city, it shall be lawful for such person, persons, firm, association or corporation to petition the city council to vacate. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing.

When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners.
CHAPTER 7
(H. B. No. 14)

AN ACT
AMENDING SECTION 50-223, IDAHO CODE, TO REQUIRE COPIES OF ANNEXATION ORDINANCES TO BE FILED WITHIN TEN DAYS OF THE EFFECTIVE DATE WITH THE COUNTY AUDITOR, THE COUNTY TREASURER AND THE COUNTY ASSESSOR OF THE COUNTY IN WHICH THE CITY IS LOCATED AND WITH THE IDAHO STATE TAX COMMISSION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 50-223, Idaho Code, be, and the same is hereby amended to read as follows:

50-223. ANNEXATION ORDINANCE TO BE FILED. – It shall be the duty of the clerk of any city, within ten (10) days following the effective date of any annexation ordinance: to file a certified copy of such ordinance with the county auditor, the county treasurer and the county assessor of the county in which the city is located, and with the Idaho state tax commission; upon the effective date of such ordinance, to comply with the provisions of section 63-2215, Idaho Code; and to order the same annexed area surveyed if the council shall so direct; the cost of said survey to be prorated according to the amount of land surveyed and assessed to the then owners of said lands as provided in section 50-908-{50-1008}, Idaho Code, and thereupon and thereafter the corporate limits of such city shall extend to and include such land, and thereafter all property and persons within the limits of such annexed tract of land shall be subject to the provisions of all by-laws and ordinances of the said city.

SECTION 2. This act shall be in full force and effect on and after July 1, 1971.

Approved February 3, 1971.
CHAPTER 8
(H. B. No. 5)

AN ACT
AMENDING SECTION 22-3806, IDAHO CODE, RELATING TO AN ASSESSMENT ON THE ESSENTIAL OILS FROM MINT, BY REDUCING THE ASSESSMENT FROM THREE CENTS PER POUND TO ONE CENT PER POUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-3806, Idaho Code, be, and the same is hereby amended to read as follows:

22-3806. ASSESSMENT IMPOSED — REQUIREMENTS — "GROWER'S ACREAGE" — ADDITIONAL ASSESSMENT — REFERENDUM. — There is hereby levied an assessment of three cents (3¢) per pound on each pound of essential oil handled in the primary channels of trade. This assessment may be increased to not exceed a total assessment of five cents (5¢) per pound as determined by a two-thirds (2/3) affirmative vote of the growers voting or a majority of the acreage voting in a referendum to be conducted by mail by the commission. The amount of any increased assessment, if any, shall be determined by resolution of the commission after February 1st or before July 1st of each year. The term "acreage" for the purposes of this subsection, means the number of acres of mint produced by a grower during the calendar year immediately next preceding each annual registration of growers as herein provided. Each grower, whether an individual, a partnership, a corporation, an association or other business unit, shall have one (1) vote at such referendum. No grower shall vote at any such referendum during any year unless such grower has, after January 1st but prior to January 15th of such year, registered with the commission on forms to be supplied by the commission giving such grower's name, mailing address and acreage, except that for the calendar year in which this subsection takes effect, the periods for the registration of growers shall be the fifteen (15) days immediately succeeding the effective date [February 24, 1969] of this subsection. The qualification of any grower to vote or the amount of such grower's acreage as shown by such grower's registration may be challenged by any other grower qualified to vote or any member of the commission. All such challenges shall be presented to the commission in writing within ten (10) days after the close of registration and shall be heard and determined by the
commission prior to canvassing the returns of any such referendum. After the adoption of a resolution by the commission fixing the amount of the additional assessment to be submitted to a referendum of the growers, the commission shall cause to be mailed by United States registered mail to each grower so registered, at the address appearing on such grower's registration, a ballot setting forth the name of such grower, the grower's acreage, a copy of the resolution so adopted, and the words, "For additional assessment as provided in the foregoing resolution," followed by a circle and the words "Against the additional assessment as provided in the foregoing resolution," followed by a circle and such ballot shall provide a space at the bottom thereof for the grower's signature. A grower desiring to vote upon the amount of the additional assessment shall mark the ballot received to express the grower's vote, shall sign the ballot and shall return the ballot to the commission within twenty (20) days after the date on which the ballot was mailed to the grower by the commission. Any ballot which is not returned within such time limit, or which is not voted, or which is not signed, or which is marked both for and against the question submitted, shall be deemed not to have been voted and shall not be counted for any purpose. The commission shall meet and canvass all ballots cast at any such referendum within ten (10) days after the date by which all ballots are herein required to be returned to the commission. Upon the canvass, if the commission finds that two-thirds (2/3) or more of the growers voting at such referendum have voted in favor of the amount of such additional assessment or that growers representing a majority or more of the production of all growers voting at such referendum have voted in favor of the amount of such additional assessment, then the amount of such additional assessment shall have been approved, but if the commission finds otherwise, then the amount of such additional assessment shall have failed. The commission shall record the results of each canvass in its official records and shall retain all election records, grower registrations and the ballots for one (1) year after the date of such canvass when it may cause the same to be destroyed. If the canvass shows that the amount of such additional assessment shall have been approved, the commission shall immediately adopt a resolution levying the amount thereof. Such additional assessment when so levied shall apply only to the pounds of mint grown during the calendar year in which the referendum approving the same was held, but shall so apply regardless of the calendar year in which such essential oils are first handled in the primary channels of trade. If the canvass shows that the amount of such additional
assessment shall have failed, the commission shall not levy the amount thereof, but the commission may resubmit the same or another amount for such additional assessment to the growers by referendum as herein provided as often as the commission deems necessary.

All assessments levied under this act shall be due on or before the time when such essential oils are first handled in the primary channels of trade and shall be paid not later than the last day of the month next succeeding the month in which such essential oils were first handled in the primary channels of trade.

The assessment constitutes a lien prior to all other liens and encumbrances upon such essential oils except liens which are declared prior by operation of a statute of this state, but payment of the assessment by either grower or dealer who first handled such essential oils shall not subject such grower or dealer to liability for a lien prior to the lien herein imposed unless actual notice of such prior lien has been made upon such grower or dealer.

The commission by order may cancel an assessment which has been delinquent for five (5) years or more if it determines that: (a) the amount of the assessment is less than $1.00, and that further collection effort or expense does not justify the collection thereof, or the assessment is wholly uncollectible.

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 February 3, 1971.

CHAPTER 9
(H. B. No. 13)

AN ACT
AMENDING SECTION 50-901, IDAHO CODE, RELATING TO ADOPTION OF CITY ORDINANCES, BY PROVIDING THAT CERTAIN NATIONAL CODES AND CERTAIN STATE STATUTES MAY BE ADOPTED BY REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. That Section 50-901, Idaho Code, be, and the same is hereby amended to read as follows:

50-901. ORDINANCES — STYLE — PUBLICATION — WHEN EFFECTIVE — IMMEDIATE OPERATION IN EMERGENCIES. — The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of " and all ordinances of a general nature shall, before they take effect and within one (1) month after they are passed, be published in at least one (1) issue of the official newspaper of the city; provided, however, that in cases of riot, infections or contagious disease, or other impending danger, requiring its immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5) public places of the city; further provided, that supplemental codes establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, traffic control devices, gas piping installations, sanitary regulations, health measures, or other related or similar work provided further, that nationally recognized codes such as but not limited to those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, health measures, and statutes of the state of Idaho such as but not limited to those relating to the operation of motor vehicles, equipment of motor vehicles, traffic control devices, motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation, may be adopted by such city council without including more than a particular reference to such code, and without publication or posting thereof, if adoption of such code be made in a regularly adopted and published ordinance; provided further, that not less than three (3) copies of such supplemental code, duly certified by the city clerk shall have been filed for use and examination by the public in the office of the clerk of such city prior to the adoption of said ordinance by the city council and thereafter kept on file in such office.

SECTION 2. This act shall be in full force and effect on and after July 1, 1971.

Approved February 5, 1971.
CHAPTER 10
(H. B. No. 30)

AN ACT
AMENDING SECTION 50-1022, IDAHO CODE, RELATING TO JOINT SERVICES, BY STRIKING REFERENCES TO CERTAIN OBSOLETE CODE SECTIONS AND INSERTING REFERENCES TO PROPER CODE SECTIONS.

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

SECTION 1. That Section 50-1022, Idaho Code, be, and the same is hereby amended to read as follows:

50-1022. JOINT SERVICES. - In addition to the authority contained in the foregoing sections and in sections 50-336, -50-337 and -50-338, 67-2326 through and including 67-2333, Idaho Code, it shall be lawful for two (2) or more cities, so situated with reference to each other that it is practicable and convenient to furnish the said inhabitants thereof with water, power or sewerage from a single plant and system, to join in the construction or purchase of such plant or system upon a substantial compliance with the provisions of sections 50-1022 to 50-1025, Idaho Code, and not otherwise.

Approved February 5, 1971.

CHAPTER 11
(H. B. No. 31)

AN ACT
AMENDING CHAPTER 22, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2214, IDAHO CODE, TO REQUIRE THE COUNTY RECORDER TO FILE AN AFFIDAVIT OF DISINCORPORATION WITH THE SECRETARY OF STATE WHEN ALL PROCEEDINGS AS SET FORTH FOR DISINCORPORATION OF A CITY HAVE BEEN SATISIFIED.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. That Chapter 22, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 50-2214, Idaho Code, and to read as follows:

50-2214. AFFIDAVIT TO BE FILED. — When the conditions and procedures set forth herein have been fully satisfied, and a declaration of disincorporation has been recorded in the proceedings of the county commissioners, the county recorder shall within fifteen (15) days, file with the secretary of state, an affidavit of disincorporation stating the date on which the dissolution became effective.

Approved February 5, 1971.

CHAPTER 12
(H. B. No. 32)

AN ACT
AMENDING SECTION 39-1338, IDAHO CODE, RELATING TO BOND ISSUES FOR HOSPITAL DISTRICTS, BY STRIKING THEREFROM THE MAXIMUM INTEREST RATE PROVIDED THEREIN; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-1338, Idaho Code, be, and the same is hereby amended to read as follows:

39-1338. BOND ISSUES AUTHORIZED — FORM AND TERMS. — To carry out the purposes of this act and to pay the necessary expenses of the district, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall bear interest at a rate not exceeding six per centum (6%) per annum, payable semiannually, and shall be due and payable serially either annually or semiannually, commencing not later than three (3) years and extending not more than twenty (20) years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity, upon payment of a premium not exceeding three per cent (3%) of the net principal thereof. Said bonds shall be executed in the name of, and on behalf of, the district and signed by the chairman of the board with the seal of the district affixed thereto, and attested by the secretary of the board. Said bonds shall be in
such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board. In all other respects, said bonds shall be issued, sold and paid in accordance with the provisions of the Municipal Bond Law of the state of Idaho.

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 February 5, 1971.

CHAPTER 13
(H. B. No. 33)

AN ACT

PROVIDING A DECLARATION OF LEGISLATIVE INTENT; REPEALING SECTIONS 2 AND 3, CHAPTER 133, LAWS OF 1970; REENACTING SECTION 39-1337, IDAHO CODE, AS IT APPEARS IN THE 1969 CUMULATIVE POCKET SUPPLEMENT TO VOLUME 7, IDAHO CODE.

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

SECTION 1. Because of an apparent oversight in attempting to amend certain sections of the Idaho Code by Sections 2 and 3, Chapter 133, Laws of 1970, and to relieve any possible legal complications which may arise from such oversight, the following amendatory act is deemed necessary.

SECTION 2. That Sections 2 and 3, Chapter 133, Laws of 1970, be, and the same are hereby repealed.

SECTION 3. That Section 39-1337, Idaho Code, as it appears in the 1969 Cumulative Pocket Supplement to Volume 7, Idaho Code, is reenacted to read as follows:

39-1337. TAX RATE — CERTIFICATION — LEVY AND COLLECTION. — The board shall, on or before the first day of September of each year, certify to the board of commissioners the rate so fixed with corrections that at the time and in the manner required by law for levying taxes for county purposes such board of county commissioners shall levy such taxes upon the assessed valuation of all taxable property within the district, in addition to such other taxes as may be levied by such board of
county commissioners at the rate so fixed and determined. It shall be the duty of the body having authority to levy taxes within each county to levy the taxes provided in this act, and it shall be the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the manner and form and with like interest and penalties as other taxes are collected, and when collected, to pay the same to the district ordering its levy and collection, and the payment of such collection shall be made monthly to the treasurer of the district and paid into the depository thereof, to the credit of the district.

Approved February 5, 1971.

CHAPTER 14
(H.B. No. 41)

AN ACT
AMENDING SECTION 63-3638, IDAHO CODE, REDUCING THE AMOUNT OF THE SALES TAX REFUND FUND FROM $250,000 TO THE SUM OF $50,000, PROVIDING THAT THE BALANCE OF THE SALES TAX REFUND FUND IN EXCESS OF $50,000 BE TRANSFERRED TO THE GENERAL FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 63-3638, be, and the same is hereby amended to read as follows:

63-3638. SALES TAX FUND — CREATION — SALES TAX REFUND FUND — APPROPRIATIONS. (a) There is hereby created in the office of the state treasurer and subject to his control and custody a fund to be known and designated as the "Sales Tax Fund."

(b) All moneys collected under this act shall be paid by the tax collector into the sales tax fund.

(c) One million dollars ($1,000,000) per biennium is hereby continuously appropriated and set aside and shall be paid from the sales tax fund to the permanent building fund, provided by section 57-1108, Idaho Code.

(d) An amount equal to the sum required to be certified by the state auditor to the state tax commission pursuant to section 59-1115, Idaho
Code, in each biennium is hereby continuously appropriated and set aside and shall be paid from the sales tax fund to the social security trust fund established by section 59-1106, Idaho Code.

(e) The payments required by this section shall be made periodically but no less frequently than quarterly.

(f) (1) Five per cent (5%) of the total amount collected and deposited in the sales tax fund during the year commencing on July 1, 1968, is hereby appropriated and shall be paid from the sales tax fund during the year commencing on July 1, 1968, to the county treasurer of each county periodically but no less frequently than quarterly in amounts to be determined under the provisions of subsection (g) of this section.

(2) Ten per cent (10%) of the total amount collected and deposited in the sales tax fund during the year commencing on July 1, 1969, is hereby appropriated and shall be paid from the sales tax fund during the year commencing on July 1, 1969, to the county treasurer of each county periodically but no less frequently than quarterly in amounts to be determined under the provisions of subsection (g) of this section.

(3) Fifteen per cent (15%) of the total amount collected and deposited in the sales tax fund during the year commencing on July 1, 1970, is hereby appropriated and shall be paid from the sales tax fund during the year commencing on July 1, 1970, to the county treasurer of each county periodically but no less frequently than quarterly in amounts to be determined under the provisions of subsection (g) of this section.

(4) Twenty per cent (20%) of the total amount collected and deposited in the sales tax fund during the year commencing on July 1, 1971, is hereby appropriated and shall be paid from the sales tax fund during the year commencing on July 1, 1971, and during each and every year thereafter to the county treasurer of each county periodically but no less frequently than quarterly in amounts to be determined in accordance with the provisions of subsection (g) of this section.

(g) The state tax commission shall compute the percentage that the average amount of taxes collected from assessments for the years 1965, 1966 and 1967 on the personal property described as business inventory in section 63-105Y, Idaho Code, for each county bears to the average total amount of taxes collected from assessments for said years on the personal property described as business inventory in section 63-105Y, Idaho Code, for all counties in the state. Such percentage so determined for each county shall be applied to the amount of sales tax fund appropriated under subsection (f)
herein and the resulting sum shall be paid to the county treasurer of each county for distribution to each taxing district in the county as follows:

(1) The county commissioners in each county shall compute the percentage that the average amount of taxes collected from assessments for the years 1965, 1966 and 1967 on the personal property described as business inventory in section 63-105Y, Idaho Code, for each taxing district in the county bears to the average total amount of taxes collected from assessments for said years on the personal property described as business inventory in section 63-105Y, Idaho Code, for all taxing districts in said county. The percentage thus determined for each taxing district in the county shall be adjusted to reflect increases and decreases in levies which vary from the average levy by each such district in the period above described and, as adjusted, applied to the county's proportionate share of said sales tax fund and the resulting amount shall be distributed to each taxing district in the county periodically but not less frequently than quarterly by the county auditor and applied by such taxing districts in the same manner and in the same proportions as revenues from ad valorem taxation.

(2) The moneys set aside and appropriated to the county treasurer out of the sales tax fund above may be considered by the counties and other taxing districts and budgeted against at the same time, in the same manner and in the same year as revenues from taxation on all classes of personal property which these moneys replace.

(h) An amount equal to five per centum (5%) of the amount deposited in the sales tax fund, but not in excess of two hundred fifty thousand dollars ($250,000) fifty thousand dollars ($50,000), shall be retained in this fund as a "Sales Tax Refund Fund" for the purpose of repaying overpayments made under this act and for the purpose of paying any other erroneous receipt illegally assessed or collected, penalties collected without authority and taxes and other amounts unjustly assessed, collected, or which are excessive in amount, and there is hereby appropriated from this fund so much thereof as may be necessary for the payment of the refunds herein provided for. The balance of the sales tax refund fund in excess of fifty thousand dollars ($50,000) shall be transferred to the general fund.

(i) Any moneys remaining in the sales tax fund over and above those necessary to meet and reserve for payments under subsections (c), (d), and (h) of this section shall be paid periodically, but no less frequently than quarterly, to the general fund.
(j) The appropriations herein provided shall not be subject to the provisions of the "Standard Appropriations Act of 1945."

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 February 8, 1971.

CHAPTER 15

(S. B. No. 1027)

AN ACT

RELATING TO REGISTRATION OF TEACHING CERTIFICATES; AMENDING SECTION 33-1207, IDAHO CODE, BY STRIKING THE REQUIREMENT THAT CERTIFICATES BE REGISTERED WITH THE BOARD OF TRUSTEES OF EACH SCHOOL DISTRICT EACH YEAR, AND PROVIDING THAT THE CERTIFICATE BE REGISTERED WITH THE BOARD OF TRUSTEES PRIOR TO BEGINNING SERVICE FOR THE FIRST TIME IN THE DISTRICT OR IN THE FIRST YEAR AFTER A NEW OR RENEWED CERTIFICATE IS ISSUED.

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

SECTION 1. That Section 33-1207, Idaho Code, be, and the same is hereby amended to read as follows:

33-1207. ENDORESEMENT AND REGISTRATION OF CERTIFICATES. — The board of trustees of each school district shall cause the certificates of each holder thereof to be endorsed each year (a) prior to beginning service for the first time with the district, or (b) in the first year after a new or renewed certificate is issued, showing the date of service thereunder; and shall cause to be maintained a continuing record of certificates, by style and number, of each certificated employee of the district.

Approved February 11, 1971.
CHAPTER 16
(H. B. No. 1)

AN ACT
AMENDING SECTION 50-222, IDAHO CODE, RELATING TO ANNEXATION OF TERRITORY BY CITIES, BY PROVIDING THAT NO ANNEXATION SHALL BE EFFECTED WITHIN NINETY-ONE DAYS PRIOR TO ANY GENERAL CITY ELECTION AT WHICH CANDIDATES FOR ELECTIVE CITY OFFICE ARE TO BE VOTED UPON; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 50-222, Idaho Code, be, and the same is hereby amended to read as follows:

50-222. ANNEXATION OF ADJACENT TERRITORY. — Whenever any land lying contiguous or adjacent to any city in the state of Idaho, or to any addition or extension thereof, shall be or shall have been by the owner or proprietor thereof or by any person by or with the owner's authority or acquiescence, laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres or whenever the owner or proprietor or any person by or with his authority requests annexation in writing to the council, or when a tract of land is entirely surrounded by properties lying within the city boundaries, it shall be competent for the council, by ordinance, to declare the same, by proper legal description thereof, a part of such city. When any land not used exclusively for agricultural purposes is completely surrounded by the boundaries of two (2) or more cities, the district court, shall after hearing the owners of the properties involved, and the elected officials of the adjacent cities, determine which if any of the cities may annex said lands.

Railroad right of way property may be annexed when property within the city adjoins both sides of the right of way notwithstanding any other provision of this section. Provided, that the city may annex only those areas
which can be reasonably assumed to be used for orderly development of the city. Provided further, that said council shall not have the power to declare such land, lots or blocks a part of said city, if they will be connected to such city only by a shoestring or strip of land upon a public highway.

Provided further, that no annexation shall be finally effected within ninety-one (91) days prior to any general city election at which candidates for elective city office are to be voted upon.

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 February 11, 1971.

CHAPTER 17
(H. B. No. 46)

AN ACT
RELATING TO THE PRACTICE OF NURSING; AMENDING SECTION 54-1413, IDAHO CODE, BY AUTHORIZING A PROFESSIONAL NURSE TO PERFORM ACTS RECOGNIZED AS APPROPRIATE ACCORDING TO RULES AND REGULATIONS PROMULGATED BY THE IDAHO STATE BOARD OF MEDICINE AND THE IDAHO BOARD OF NURSING.

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

SECTION 1. That Section 54-1413, Idaho Code, be, and the same is hereby amended to read as follows:

54-1413. DEFINITIONS. — As used in this act:
(a) Commissioner means commissioner of law enforcement.
(b) Department means department of law enforcement.
(c) Board means the board of nursing.
(d) Council means the advisory council of licensed practical nurses.
(e) Practice of nursing:
The practice of professional nursing means the performance for compensation of any act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a licensed physician or dentist; requiring substantial specialized judgment and skill based on knowledge and application of the principles of
biological, physical and social science. The foregoing shall not be
deemed to include acts of medical diagnosis or prescription of
therapeutic or corrective measures, except as may be authorized by
rules and regulations jointly promulgated by the Idaho state board of
medicine and the Idaho board of nursing which shall be implemented
by the Idaho board of nursing.

The practice of practical nursing means the performance for
compensation of selected acts in the care of the ill, injured, or infirm
under the direction of a registered professional nurse or a licensed
physician or a licensed dentist; and not requiring the substantial
specialized skill, judgment and knowledge required in professional
nursing.

f. Nursing school means a course of training designed to prepare and
represented as preparing persons for licensure under this act as a registered
nurse.

g. Course for the training of practical nurses means a course of training
designed to prepare and represented as preparing persons for licensure under
this act as a licensed practical nurse.

Approved February 11, 1971.

CHAPTER 18
(H. B. No. 52)

AN ACT
AMENDING SECTION 30-601, IDAHO CODE, RELATING TO THE
ANNUAL STATEMENT OF CORPORATIONS, ELIMINATING THE
NECESSITY OF FILING A COPY OF THE ANNUAL STATEMENT
WITH THE COUNTY RECORDER WITH WHICH THE
CORPORATION HAS FILED ITS ARTICLES OF INCORPORATION;
AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 30-601, Idaho Code, be, and the same is
hereby amended to read as follows:

30-601. ANNUAL STATEMENT OF CORPORATIONS. — Every
corporation organized or formed under, by or pursuant to the laws of this
state, whether now existing or hereafter created, and every foreign
corporation, joint stock company or association now doing business in this
state, or that may hereafter do business in this state, shall, during the month
of July of each year and on or before the first day of September next
thereafter, furnish to the secretary of state and the county recorder of each
county in this state wherein the articles of such corporation are filed, an
annual statement hereinafter provided for, upon blanks to be supplied by the
secretary of state for filing in the office of the secretary of state, and by the
county recorder for filing in the office of the county recorder of such
county or counties. The county recorder shall collect a fee of one dollar
($1.00) for filing and indexing said statements.

The said statement shall be sworn to by one (1) of the officers of the
corporation, or managing agent, or authorized attorney in fact in this state
of any foreign corporation, joint stock company, or association, before an
officer duly authorized to administer oaths, setting forth the name of the
corporation, joint stock company or association, the location of its principal
office, the names of the president, secretary and treasurer, and the directors,
with the post-office address of each, date of annual election of directors and
officers of such corporation, joint stock company or association, the amount
of authorized capital stock, the number of shares, the par value of each
share, the amount of the capital stock subscribed, the amount of capital
stock issued and the amount of capital stock paid up.

Every foreign corporation, joint stock company or association shall
include in such statement the name and post-office address of its managing
agent or attorney in fact in this state.

All educational, religious, scientific and charitable corporations, and all
corporations which are not organized for pecuniary profit are required to file
the annual statement referred to in this section specified in this section; provided, however, that corporations which are not
organized for pecuniary profit shall file an additional statement showing the
annual salary or wages paid to all directors, officers, agents and employees of
such corporations.

However, nothing in this section shall be so construed as to require fire,
marine, fire and marine, life, accident, life and accident, and surety
companies, to file the annual statement referred to in this section.

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 February 11, 1971.
CHAPTER 19
(H. B. No. 56)

AN ACT
AMENDING SECTION 67-509, IDAHO CODE, RELATING TO LEGISLATIVE JOURNALS, BY PROVIDING THAT PUBLICATION OF THE LEGISLATIVE JOURNALS SHALL BE AS PROVIDED BY THE PRINTING COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-509, Idaho Code, be, and the same is hereby amended to read as follows:

67-509. PRINTING PUBLICATION OF LEGISLATIVE JOURNALS — DISTRIBUTION. — On the first legislative day or as soon thereafter as the speaker shall have been elected, it shall be the duty of the president of the senate and the speaker of the house of representatives each to appoint a printing committee for his body whose duties shall be, in addition to its duties prescribed by the rules of said bodies respectively, to immediately meet in joint session and to provide, in the same manner as for other legislative printing, for the printing publication of the journals of the two houses of the legislature. Said committee shall determine the form of the journals to be used, the size of the type, the number to be distributed to each member of the legislature and the method of distribution, and the manner in which the journals are to be bound for the permanent copies of the journal.

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 February 11, 1971.

CHAPTER 20
(H. B. No. 28)

AN ACT
RELATING TO DIVORCE, AMENDING SECTION 32-603, IDAHO CODE,
BY ADDING IRRECONCILABLE DIFFERENCES AS A GROUND FOR DIVORCE; AMENDING CHAPTER 6, TITLE 32, IDAHO CODE, BY ADDING A NEW SECTION 32-616, IDAHO CODE, DEFINING IRRECONCILABLE DIFFERENCES.

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

SECTION 1. That Section 32-603, Idaho Code, be, and the same is hereby amended to read as follows:

32-603. CAUSES FOR DIVORCE. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
7. When either the husband or wife has become permanently insane, as provided in sections 32-801 to 32-805, inclusive.
8. Irreconcilable differences.

SECTION 2. That Chapter 6, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 32-616, Idaho Code, and to read as follows:

32-616. IRRECONCILABLE DIFFERENCES. — Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

Approved February 13, 1971.
COURT, TO DETERMINE WHETHER OR NOT RECONCILIATION BETWEEN THE PARTIES IS PRACTICABLE; AND PROVIDING THAT THE COURT MAY STAY PROCEEDINGS FOR A PERIOD OF NINETY DAYS TO ATTEMPT RECONCILIATION WHERE MINOR CHILDREN ARE INVOLVED, AND PROVIDING THAT THESE PROCEDURES SHALL NOT BE CONSTRUED AS A CONDONATION ON THE PART OF EITHER SPOUSE OF ACTS THAT MAY CONSTITUTE GROUNDS FOR DIVORCE.

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

SECTION 1. That Chapter 7, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 32-716, Idaho Code, and to read as follows:

32-716. RECONCILIATION PROCEEDINGS. — No hearing on the merits upon grounds for divorce shall be held in any action for divorce, and no final decree of a court of competent jurisdiction shall be entered in any such case, except as hereinafter provided, until at least twenty (20) days after the commencement of the action and service of process. During such period of twenty (20) days, or at any time subsequent and prior to entry of final decree therein, the court, upon application of one (1) of the parties, may require a conference of the parties with a person or persons of his choosing, or persons selected by the court, in order to determine whether or not a reconciliation between the parties is practicable; provided, however, that nothing herein shall prevent the court from making such interim orders as may be just and equitable; provided, further, that nothing herein shall prevent the court from proceeding to try the matter on the merits and enter a final decree of divorce upon the agreement of both parties and with both parties present in person or represented by counsel at such trial.

In any action of divorce where grounds for divorce have been established, if the court finds that attempts at reconciliation are practicable and to the best interest of the family, the court may stay the proceedings for a period not to exceed ninety (90) days where there are minor children in the family.

The reconciliation procedures herein provided shall not be construed as a condonation on the part of either spouse of acts that may constitute grounds for divorce.

Approved February 13, 1971.
CHAPTER 22
(H. B. No. 53)

AN ACT
AMENDING SECTION 1 OF AN ACT ENTITLED: "AN ACT FOR THE
ESTABLISHMENT AND MAINTENANCE OF GRADED SCHOOLS
IN THE CITY OF LEWISTON," APPROVED DECEMBER 30, 1880,
THE SAME BEING SECTION 738 OF THE LOCAL AND SPECIAL
LAWS OF THE STATE OF IDAHO, AS AMENDED BY SECTION 1
OF HOUSE BILL NO. 105 OF THE 1909 SESSION LAWS OF THE
STATE OF IDAHO, AS AMENDED BY SECTION 1 OF CHAPTER 22
OF THE 1923 SESSION LAWS OF THE STATE OF IDAHO, AS
AMENDED BY SECTION 1 OF CHAPTER 100 OF THE 1923
SESSION LAWS OF THE STATE OF IDAHO, AS AMENDED BY
SECTION 1 OF CHAPTER 81 OF THE 1931 SESSION LAWS OF
THE STATE OF IDAHO, RELATING TO AND AMENDING THE
LEGAL DESCRIPTION OF THE BOUNDARIES OF INDEPENDENT
SCHOOL DISTRICT NO. 1 OF NEZ PERCE COUNTY, IDAHO;
AMENDING SECTION 2 OF AN ACT ENTITLED: "AN ACT FOR
THE ESTABLISHMENT AND MAINTENANCE OF GRADED
SCHOOLS IN THE CITY OF LEWISTON," APPROVED DECEMBER
30, 1880, THE SAME BEING SECTION 739 OF THE LOCAL AND
SPECIAL LAWS OF THE STATE OF IDAHO, AS AMENDED BY
SECTION 2 OF HOUSE BILL NO. 105 OF THE 1909 SESSION LAWS
OF THE STATE OF IDAHO, TO REMOVE THE REQUIREMENT
THAT ONLY RESIDENT TAXPAYERS SHALL BE PERMITTED TO
VOTE ON THE QUESTION OF BONDING THE DISTRICT;
AMENDING SECTION 3 OF AN ACT ENTITLED: "AN ACT FOR
THE ESTABLISHMENT AND MAINTENANCE OF GRADED
SCHOOLS IN THE CITY OF LEWISTON," APPROVED DECEMBER
30, 1880, THE SAME BEING SECTION 740 OF THE LOCAL AND
SPECIAL LAWS OF THE STATE OF IDAHO, AS AMENDED BY
SECTION 3 OF HOUSE BILL NO. 105 OF THE 1909 SESSION LAWS
OF THE STATE OF IDAHO, AS AMENDED BY SECTION 1 OF
CHAPTER 5 OF THE 1937 SESSION LAWS OF THE STATE OF
ADJACENT TO INDEPENDENT SCHOOL DISTRICT NO. 1;
REPEALING SECTION 40 OF AN ACT ENTITLED: "AN ACT FOR THE ESTABLISHMENT AND MAINTENANCE OF GRADED SCHOOLS IN THE CITY OF LEWISTON," APPROVED DECEMBER 30, 1880, WHICH SECTION 40 WAS CREATED AND ADDED TO SAID ACT BY SECTION 1 OF CHAPTER 25 OF THE SESSION LAWS OF THE FIRST EXTRAORDINARY SESSION OF THE 28TH SESSION OF THE IDAHO LEGISLATURE (APPROVED MARCH 12, 1946) RELATING TO WHEN LAWS IN RELATION TO THE TEACHERS' RETIREMENT SYSTEM OF IDAHO APPLY TO INDEPENDENT SCHOOL DISTRICT NO. 1 OF NEZ PERCE COUNTY, IDAHO; REPEALING SECTION 41 OF AN ACT ENTITLED: "AN ACT FOR THE ESTABLISHMENT AND MAINTENANCE OF GRADED SCHOOLS IN THE CITY OF LEWISTON," APPROVED DECEMBER 30, 1880, WHICH SECTION 41 WAS CREATED AND ADDED TO SAID ACT BY SECTION 3 OF CHAPTER 92 OF THE 1939 SESSION LAWS OF THE STATE OF IDAHO RELATING TO WHEN GENERAL LAWS ARE APPLICABLE; REPEALING CONFLICTING ACTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 738 of the Local and Special Laws of the state of Idaho, as amended by Section 1 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 22 of the 1923 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 100 of the 1923 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 81 of the 1931 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 1. BOUNDARIES OF DISTRICTS. - That portion of Nez Perce County in the State of Idaho comprising the City of Lewiston and the Territory adjacent thereto, described as follows, to-wit: Commencing at the junction of Snake and Clearwater Rivers and running thence easterly following the meander of the Clearwater River to the West line of the Nez Perce Indian Reservation; thence Southerly to the northeast corner of Section 20 of Township 35 North of Range 4 West, Boise Meridian; thence west along a continuation of the North line of said Section 20 to a point on the North line of Section 22 of Township 35 North of Range 5 West, Boise.
Meridian, 1650 feet east of the Northwest corner of said Section 22, the
same being the Northeast corner of Lot 4 in Block 64, Lewiston Orchards
Tract No. 4, according to the recorded plat thereof; thence at right angles
South to the Center line of said Section 22; thence West to Snake River;
thence Northerly along said river to the place of beginning. Beginning at a
point on the West line of the Nez Perce Indian Reservation at the Northeast
corner of the Northwest Quarter of the Southwest Quarter of Section 12,
Township 36 North of Range 5 West, Boise Meridian; thence West three
and three-quarter miles to the North and South center line of Section 8,
Township 36 North of Range 5 West, Boise Meridian; thence South one and
one-half miles to the South boundary line of Section 17, Township 36 North
of Range 5 West, Boise Meridian; thence West to the State line between
Washington and Idaho at the West boundary of Section 24, Township 36
North of Range 6 West, Boise Meridian (said point being the Northwest
corner of said Section 24); thence Southerly along the state line to a point
where a continuation of the East and West center line of Section 22,
Township 35 North of Range 5 West, Boise Meridian, intersects the mid
channel of the Snake River, which is the state line; thence East along the
continuation of the East and West center line of said Section 22 to a point
1650 feet East of the West boundary line of said Section 22; thence North to
a point 1650 feet East of the Northwest corner of said Section 22, the same
being the Northeast corner of Lot 4, Block 64 of Lewiston Orchards Tract
No. 4, according to the recorded plat thereof; thence east along a
continuation of the North line of Section 22 to a point where the North line
of Section 20, Township 35 North of Range 4 West, Boise Meridian,
intersects the West line of the Nez Perce Indian Reservation line; thence
Northerly along said Indian Reservation line and said line projected
Northerly to a point on the meander line of the North Bank of the
Clearwater River in Section 19, Township 36 North of Range 4 West, Boise
Meridian; thence Westerly along the meander line of the North Bank of the
Clearwater River to its intersection with the West boundary line of the Nez
Perce Indian Reservation in Section 25, Township 36 North of Range 5
West, Boise Meridian; thence Northerly on said West boundary line of said
Nez Perce Indian Reservation to the point of beginning; is hereby organized
and established as an independent school district to be known as District,
No. 1, of Nez Perce County, Idaho, with the powers hereinafter specified.

SECTION 2. That Section 2 of an Act entitled: "An Act for the
Establishment and Maintenance of Graded Schools in the City of Lewiston,"
approved December 30, 1880, the same being Section 739 of the Local and
Special Laws of the state of Idaho, as amended by Section 2 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 2. QUALIFICATIONS OF ELECTORS. — Any person who is a qualified elector of the State of Idaho and has resided in said district for thirty (30) days shall be eligible to office in said district and entitled to vote at all elections held therein for any purpose. Provided, that when the question of bonding the district is submitted to the electors thereof that only resident taxpayers shall be permitted to vote on said bonding question.

SECTION 3. That Section 3 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 740 of the Local and Special Laws of the state of Idaho, as amended by Section 3 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 5 of the 1937 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 27 of the 1959 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 3. ELECTIONS. — An election shall be held at such school houses as shall be designated by the board of directors of schools of said district, on the second Tuesday of April, 1959, at which time two (2) directors of schools of said district shall be elected for a term expiring at 8:00 o'clock P.M., Pacific Standard Time, on the second Monday of May, 1965; and another election shall be held on the second Tuesday of April, 1961, at which time two (2) directors shall be elected for a term expiring at 8:00 o'clock P.M., Pacific Standard Time, on the second Monday of May, 1967; another election shall be held on the second Tuesday of April, 1963, at which time one director shall be elected for a term expiring at 8:00 o'clock P.M., Pacific Standard Time, on the second Monday of May, 1969. Thereafter there shall be an election held for members of the board of directors of schools of said district biennially on the second Tuesday of April, in the odd numbered years. Two (2) directors shall be elected in 1965, two (2) directors in 1967, and one (1) director in 1969, and their respective successors shall be elected at the regular election held in the year of the expiration of their respective terms. Each director elected during the year 1959 and years subsequent thereto shall serve for the term of six (6) years beginning at 8:00 o'clock P.M., Pacific Standard Time, on the second Monday of May of the year of his election, or until his successor is elected and qualified. Provided however: That any Director of said district now holding office shall, if he desires, complete the term for which he was elected, but if not, a director elected in the year of the expiration of his term
shall succeed him. In any case where two (2) directors are elected in an election year, and a present director, whose term expires in such year, desires to complete his present term of six (6) full years, and the other director, whose term also expires in that year, does not desire to complete his present term of six (6) full years, then the remaining members of the board of directors shall choose by majority vote one (1) of the two (2) directors elected in that year to succeed the present director who does not desire to complete his term of six (6) full years. Each person elected such a director shall file with the clerk of said board of directors within ten (10) days after his election, his oath of office, and a failure to file said oath shall be deemed a refusal to serve. And it shall thereupon be the duty of the directors holding over to fill such office by appointment until the next regular election, or until his successor is elected or appointed and qualified.

At said election two (2) of the Judges shall act as clerks and one (1) as chairman, and any person offering to vote may be challenged by any legally qualified elector of the district, and any one of the judges of the election shall thereupon administer to the person challenged an oath, as follows; "You do solemnly swear (or affirm) that you are a citizen of the United States; that you have resided in this state for six (6) months last past and in this school district for thirty (30) days last past, and that you are twenty-one (21) years of age or over; and that you have not voted at this election."

If a person so challenged shall refuse to take such oath or affirmation his vote shall be rejected.

Any person guilty of voting illegally at an election held in the district shall be punished as is or may be provided by the general election laws of the state of Idaho for the punishment of illegal voting at a general election.

At said election the polls shall be opened by one of the board of directors, or by any qualified voter, at eleven o’clock in the forenoon and closed at seven o’clock in the evening of the same day. Such election shall be conducted generally, when not otherwise provided by this Act, as general elections are conducted; and any member of the board of directors or any magistrate the duly appointed clerk of the board of directors may qualify the officers of election faithfully to perform their duties as such and to make true returns of such election to the board of directors of said district who in turn shall make return of such election to the County Auditor of Nez Perce County, Idaho, and for any violation of such duties any of said officers shall be liable to the same pains and penalties as are or may be provided by the general election laws for like offenses by officers of any general election.

The voting at said election shall be by ballot and the results of the election shall be determined in the same manner as the results are determined under the general election laws of the state of Idaho.
SECTION 4. That Section 9 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 746 of the Local and Special Laws of the state of Idaho, as amended by Section 8 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 92 of the 1939 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 9. VACANCIES ON BOARD. — If any director dies, removes from the district, or ceases to have the qualifications for such office, neglects or refuses to act, or without excuse satisfactory to the majority of the board ceases to attend the meetings of the board for four (4) successive regular meetings thereof, his office thereby becomes vacant, and a majority of any board of directors shall appoint another qualified person to fill such vacancy, which appointee shall serve for the unexpired term of his predecessor: Provided, That if at any time less than a quorum of the board of directors shall exist, the Board of County Commissioners of Nez Perce County, Idaho, shall appoint a sufficient number of directors, upon the application of those remaining on the board, to constitute a quorum, and the quorum thus constituted shall fill the remaining vacancies aforesaid.

SECTION 5. That Section 10 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 747 of the Local and Special Laws of the state of Idaho, as amended by Section 9 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 10. SUPERINTENDENT OF SCHOOLS. — The Superintendent of Schools of said Independent District No. 1 shall have general supervision of the schools of said district, subject to the control of the board. He shall report the condition of such schools from time to time as required by the Board. He shall superintend the grading of the same and the examination for promotion of all pupils, and he shall perform such other duties as may be required by the board. He shall be ex-officio a member of the board of directors of said district but shall not have the power to vote. He shall also make to the State Superintendent of Idaho such reports as may be required by said State Superintendent, and shall make such reports to the County Superintendent of Public Instruction as are required by the general laws of the State of Idaho, or that may be required by said County Superintendent.
SECTION 6. That paragraph numbered 9 of Section 20 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 768, sometimes designated Section 767, of the Local and Special Laws of the state of Idaho, as amended and added to by paragraph numbered 9 of Section 12 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

9. To suspend or expel pupils from the schools of said District who refuse to obey the rules thereof; and the said board may exclude from all schools of said District all children under five (5) six (6) and over twenty-one (21) years of age.

SECTION 7. That paragraph numbered 17 of Section 20 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 768, sometimes designated Section 767, of the Local and Special Laws of the state of Idaho, as amended and added to by paragraph numbered 17 of Section 12 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby repealed.

SECTION 8. That Section 23 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 771 of the Local and Special Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 23. The records of the board of directors, signed by the president, or a transcript thereof, or any part thereof, and all papers belonging to the office, or a transcript thereof certified by the clerk, shall be prima facie evidence of the facts therein stated, and all records, books and papers belonging to said board, of any legal voter or taxpayer of said district.

SECTION 9. That Section 26 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, the same being Section 774 of the Local and Special Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 26. ACTIONS. - The board of education, as a body corporate, may prosecute any actions in their its official capacity, on behalf of the district, in the following cases:

1st. On a contract made with them it in their its official capacity;

2d. To enforce a liability, or a duty enjoined by law in favor of
officers, or board, or district;

3d. To recover a penalty or forfeiture given to school board or district;
4th. To recover damages for an injury to their its official rights or property, or to the property of the district;

5th. An action may be brought against members of the board of directors as a body corporate in their its official capacity, either upon contract made by such board in their its official capacity and within the scope of their its authority, or for an injury to the rights of the plaintiffs arising from some act or omission of such board, or of the district. The actions—authorized by this section may be brought by or against said members of said board, upon a cause of action which accrued within the time of their predecessors, as well as within their own term of office; and, when brought, may be continued by or against the successors in office of the parties whose names may for that purpose be submitted in the action.

6th. In legal proceedings against the board of directors in their its official capacity, all processes and papers may be served on any one (1) of them member of the board, and the party served shall notify the other board of the fact of such service.

7th. When a judgment is recovered against any of the board of directors in any action prosecuted by or against them, in their name of office it, no execution shall issue on said judgment, but the same, if for recovery of money, shall, unless reversed or stayed on an appeal, be paid by the Treasurer of the District upon demand, and the delivery to him of the certified copy of the docket of the judgment if there is sufficient money of said district in his hands not otherwise appropriated. If there are no funds in his hands in the Treasury available for the payment of said judgment, the Board of Education, on the filing of a certified copy of said judgment with the Clerk of the board shall include the amount of said judgment in the amount of tax to be raised by the next levy, and cause the same to be levied and collected as in other cases, and the judgment paid.

SECTION 10. That Section 28 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 28 was created and added to said act by Section 15 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 134 of the 1917 Session Laws of the state of Idaho, as amended by Section 4 of Chapter 22 of the 1923 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 226 of the 1929 Session Laws of the state of Idaho, as amended by
Section 2 of Chapter 92 of the 1939 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 5 of the Second Extraordinary Session of the 27th Legislature of the state of Idaho, as amended by Section 1 of Chapter 210 of the 1947 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 17 of the 1949 Session Laws of the state of Idaho, as amended by Section 1 of Chapter 70 of the 1951 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

**SECTION 28. TAXES AND DEPOSITS.** Assessments for taxes of Independent School District No. 1 must be made and the same shall be equalized and collected by the county officers of the county of Nez Perce, the same as other taxes for state and county purposes. And the moneys arising therefrom shall be handled and accounted for by said county officers and paid over from time to time as provided by the general school laws of the State of Idaho; Provided, however, that all moneys received or collected for or on behalf of Independent School District No. 1 of Nez Perce County, Idaho, shall be kept under a separate account by said County officers and shall be deposited by said officers under the general depository laws of the State of Idaho, and the interest arising from such deposits shall be placed to the credit of said district and shall be the property of the same.

On or before the first Monday in September of each year, the County Auditor of Nez Perce County shall deliver to the Clerk of the Board of Directors of said Independent School District No. 1 a statement showing the aggregate valuation of all taxable property in said independent school district, for said fiscal year as shown by the assessment rolls at said time. The Board of Directors of said Independent School District No. 1 shall, on or before the first Friday after the first Monday of September in each year, ascertain and determine the amount of money required to be raised by a special tax on the property in the District for the purpose of maintaining the schools of the District, paying its obligations, including interest on its bonded indebtedness, and providing a fund or sinking fund for the retirement thereof, and further creating and providing a building improvement and equipment fund which fund may be allowed to accumulate and shall be used only for repairs and improvements of school property, and the purchase and repair of school equipment, and said Board shall, on or before the second Monday of September in each year, fix, determine and levy the school tax for said District by order or resolution spread upon its minutes and certify the rate and levy so made to the County Auditor and County Commissioners of Nez Perce County: Provided,
however, that exclusive of the levy made for bond redemption and such special levies as may be authorized by the general laws of the state of Idaho, the composite levy of the county and the district shall not exceed forty-five mills. Said county of Nez Perce shall not be entitled to any fees or other compensation for collecting or handling any tax money for such district, nor shall said county or any of its officers make any charge for services rendered in connection with the collection or handling of said money, or deduct or retain any part of such tax money for such services.

All county officers of Nez Perce County, whose duty it is to assess, collect, pay over, and have custody of school taxes, shall be intrusted with the assessment, collecting, paying over and custody of said school taxes for said district, and their sureties shall be liable upon their official bonds for the faithful performance of their duties in assessing, collecting and safekeeping of said school taxes, and for the paying over of the same to the proper authorities of said school district.

SECTION 11. That Section 32 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 32 was created and added to said act by Section 15 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 32. MAY ISSUE FUNDING BONDS. The Board of Directors of Independent School District No. 1 may issue negotiable coupon bonds for the District for the purpose of paying, retiring or refunding the principal or interest on any of the outstanding bonded indebtedness of the district whenever the same can be done to the profit or advantage of the district, and without the district incurring any additional indebtedness or liability exceeding in one (1) year the income or revenue provided for such year. Such bonds must bear interest at not exceeding five seven per centum (7%) per annum, payable semi-annually at the office of the County Treasurer of Nez Perce County, Idaho, and the principal of said bonds or any part thereof may, at the option of the District, be paid at any time after ten (10) years and must be paid within twenty (20) thirty (30) years from the time they are issued, and in the order in which they are issued and numbered. Semi-annual interest coupons covering the interest to grow due must be attached to each bond. The bonds must be signed by the President of the Board and attested by the Clerk with the seal of the District, and the coupons must also be signed by said officers, and said bonds shall be registered by the Clerk and also by the Treasurer of Nez Perce County,
Idaho. No bonds shall be sold at less than its par value and the proceeds thereof must be devoted to the payment, redemption or refunding of the outstanding bonded indebtedness of the District.

SECTION 12. That Section 33 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 33 was created and added to said act by Section 15 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 33. IMPROVEMENT BONDS TO BE AUTHORIZED BY ELECTORS. – The Board of Directors of Independent School District No. 1 may, when a majority of said Board so decide, submit to the qualified electors who are taxpayers of the District, at an election to be held for that purpose, and to be called and conducted as other school elections in said district, the question whether the Board shall be authorized to issue the negotiable coupon bonds of the district in an amount to be mentioned in the notice of election, for the purpose of providing and improving schoolhouses and grounds, and furniture, apparatus, and fixtures for said district or any or either of said purposes; and if at such election, two-thirds of said electors of said District voting at said election assent thereto, the Board of Directors may issue such bonds of the District to the amount and for the purpose designated in said notice, which bonds shall be in all respects similar to and shall be signed, negotiated, registered, bear interest and be made payable as provided in the last preceding section; and no bond shall be sold for less than its par value; and the proceeds thereof must be devoted to the purposes mentioned in said notice.

SECTION 13. That Section 34 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 34 was created and added to said act by Section 15 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 34. LEVY OF TAXES FOR PAYMENT OF INTEREST AND PRINCIPAL. – The Board of Directors of Independent School District No. 1, when bonds have been issued under authority of the last two preceding sections, must annually levy upon all the taxable property of the district, in addition to other authorized taxes, a tax sufficient to pay the interest on all bonds so issued as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty (20) thirty (30) years from the time the bonds are issued, which said taxes so assessed shall
be devoted to the payment of said principal and interest of said bonds only, and the accumulated sinking fund may be used for the redemption of said bonds at any time after ten (10) years from the date of their issue.

SECTION 14. That Section 35 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 35 was created and added to said act by Section 15 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 35. INVESTMENTS IN—BONDS—OR—WARRANTS. — Whenever there shall have accumulated in the hands of the Treasurer moneys belonging to Independent School District No. 1 to an amount in excess of the amount which in the opinion of the Board of Directors of said School District shall be necessary for the current expenses of maintaining the schools in said district, the same shall be invested by said Board in United States bonds, State bonds, State warrants, County warrants, bonds or certificates of indebtedness of the United States of America, or in bonds or warrants of the state of Idaho, or in warrants or tax anticipation notes of any county of the state of Idaho, or in deposits or investments as are now or may hereafter be authorized and prescribed by the Idaho Public Depository Law, and said Board shall deposit such securities in some safe deposit and they shall there be kept until it shall become necessary to convert the same into money for school district purposes, to be determined by said Board.

SECTION 15. That Section 38 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 38 was created and added to said act by Section 15 of House Bill No. 105 of the 1909 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 38. No general laws of the state of Idaho or any amendments that may be made thereto shall have the effect to alter or amend this special law or any of the provisions thereof, providing for or relating to Independent School District No. 1 of Nez Perce County, Idaho, when inconsistent therewith, unless the Act enacting such general laws clearly expresses such intention by a direct reference to the special and local laws of the said Independent School District No. 1 of Nez Perce County, Idaho: provided, that the general laws of the state of Idaho, to the extent that they are not inconsistent with this act, shall be the law of said District, except as provided in this Act.
(a) The taking of the school census, the enumeration of children, and the apportionment and payment of school funds and school moneys by the state and county;

(b) The issuance and refunding of bonds by school districts organized under the general laws of Idaho, the plan of the bonds to be issued, the registration thereof; the redemption of bonds and the calling of bonds for payment;

(c) The levying, assessing, equalizing and collection of county taxes for the maintenance and support of schools;

(d) The public depository law and other laws relative to the safe-keeping and protection of the funds of the district;

(e) Special levies;

(f) The Public Employees’ Retirement Act.

SECTION 16. That Section 40 of an Act entitled: “An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston,” approved December 30, 1880, which Section 40 was created and added to said Act by Section 3 of Chapter 92 of the 1939 Session Laws of the state of Idaho, be, and the same is hereby amended to read as follows:

SECTION 40. Whenever ten or more resident-freholders electors having the qualifications for electors in elections for school trustees under the general laws of the state of Idaho in any territory adjacent to said Independent School District No. 1 shall present a petition to the Board of Directors of said district, setting forth the boundaries, the number of resident children of school age, the assessed valuation of all taxable property, the school indebtedness of said adjacent territory, and praying that a special election be held in said territory within six months for the purpose of annexing said territory to said district, said Board of Directors of said Independent School District No. 1 may, if in their discretion the same is deemed advisable and for the best interest of said district, forthwith call a special election in said territory, fixing the date thereof, for the purpose of submitting to the electors thereof, having qualifications required of electors for election of school trustees under the general laws of the state of Idaho, the question of annexing said territory to said district. Notice of the time and place of holding said election shall be given, and said election shall be conducted, in the same manner as provided for holding election of trustees of independent school districts under the general laws of the state of Idaho, so far as applicable, except that said election shall be held at a place in said territory proposed to be annexed, designated by said board. The ballots for
said election shall contain the words "Annexation Yes" and "Annexation No," the voter placing the cross (X) after the words which indicate his choice. If a majority of the votes cast at such election are "Annexation Yes" then the board shall pass a resolution annexing said territory and describing the boundaries of said district as enlarged by said annexation, and shall file a certified copy of said resolution with the County Recorder of Nez Perce County, which resolution so certified shall be recorded by said County Recorder without charge in the same manner as orders affecting real estate. Thereafter the persons and property in said annexed territory shall be subject to all of the benefits, obligations and burdens of said district, and shall become part and parcel thereof, and said Independent School District No. 1 shall become vested with the title and right to possession of all of the school property, both real and personal, within the territory so annexed, and shall assume all the school indebtedness and obligations thereof. In the event it becomes necessary to apportion said indebtedness and school property on account of the division of another school district, or for other cause, then the Board of County Commissioners of Nez Perce County shall equitably apportion such property and indebtedness and the decision of the Board of County Commissioners of said county shall be final unless an appeal shall be taken by either of such districts therefrom to the district court of said county within the same time and in the same manner as other appeals are taken from orders of county commissioners under the general laws of the state of Idaho.

SECTION 17. That Section 40 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 40 was created and added to said act by Section 1 of Chapter 25 of the Session Laws of the First Extraordinary Session of the 28th Session of the Idaho Legislature (approved March 12, 1946), be, and the same is hereby repealed.

SECTION 18. That Section 41 of an Act entitled: "An Act for the Establishment and Maintenance of Graded Schools in the City of Lewiston," approved December 30, 1880, which Section 41 was created and added to said act by Section 3 of Chapter 92 of the 1939 Session Laws of the state of Idaho, be, and the same is hereby repealed.

SECTION 19. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION 20. An emergency existing therefor, which emergency is hereby declared to exist, this act shall take effect and be in full force from
and after its passage and approval.
Approved February 13, 1971.

CHAPTER 23
(H. B. No. 35)

AN ACT
AMENDING SECTION 22-3510, IDAHO CODE, RELATING TO THE DUTIES AND POWERS OF THE PEA AND LENTIL COMMISSION, BY STRIKING THE REFERENCE TO A TAX AND BY PROVIDING FOR AN ANNUAL AUDIT; AMENDING SECTION 22-3511, IDAHO CODE, RELATING TO ACCEPTANCE OF GRANTS, BY STRIKING THE REFERENCE TO THE "IDAHO PEA AND LENTIL COMMISSION FUND" AND PROVIDING FOR THE DEPOSIT OF FUNDS IN A BANK ACCOUNT; AMENDING SECTION 22-3515, IDAHO CODE, RELATING TO THE IMPOSITION OF AN ASSESSMENT, BY STRIKING REFERENCES TO A TAX AND SUBSTITUTING ASSESSMENT FOR TAX; AMENDING SECTION 22-3516, IDAHO CODE, RELATING TO DELIVERY OF INVOICES, BY SUBSTITUTING ASSESSMENT FOR TAX; AMENDING SECTION 22-3517, IDAHO CODE, RELATING TO PAYMENT OF ASSESSMENTS, BY SUBSTITUTING ASSESSMENT FOR TAX, BY PROVIDING FOR THE DEPOSIT OF FUNDS IN A BANK ACCOUNT, EXCEPT FUNDS KEPT FOR DAILY CASH NEEDS, BY PROVIDING FOR DESIGNATING CERTAIN DEPOSITORYIIES THAT MAY ACCEPT ACCOUNTS, AND BY PROVIDING FOR METHODS TO PAY MONEY FROM ACCOUNTS; AMENDING SECTION 22-3518, IDAHO CODE, RELATING TO PENALTIES, BY PROVIDING THAT VIOLATIONS CONSTITUTE A MISDEMEANOR; PROVIDING FOR TRANSFER OF MONEYS TO A STATE DEPOSITORY DESIGNATED BY THE COMMISSION, AND PROVIDING FOR TRANSFER OF PROPERTY TO THE COMMISSION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-3510, Idaho Code, be, and the same is hereby amended to read as follows:
22-3510. DUTIES AND POWERS OF COMMISSION. —
(1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the act, the commission shall have the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.
(b) To find new markets for pea and lentil products.
(c) To give, publicize and promulgate reliable information showing the value of peas and lentils for any purpose for which they are found useful and profitable.
(d) To make public and encourage the widespread national and international use of the special kinds of pea and lentil products produced from all varieties of peas and lentils grown in Idaho.
(e) To investigate and participate in studies of the problems peculiar to the producers of peas and lentils in Idaho.
(f) To take such action as the commission deems necessary or advisable in order to stabilize and protect the pea and lentil industry of the state.
(g) To sue and be sued.
(h) To enter into such contracts as may be necessary or advisable.
(i) To appoint and employ all necessary officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.
(j) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.
(k) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.
(l) To lease, purchase or own the real or personal property deemed necessary in the administration of this act.
(m) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in this act.
(n) To adopt, rescind, modify and amend all necessary and proper
orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties.

(o) To incur indebtedness and repay the same, and carry on all business activities.

(p) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to the inspection and audit by the state auditor and public at all times. To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited subject to lawful, sound procedures and methods of accounting at least annually and a copy of such audit shall be delivered within thirty (30) days after completion thereof to the governor, commissioner of agriculture, state auditor and the commission. The books, records and accounts shall be open to inspection and audit by the state auditor and public at all times. Make a full and complete report available to all Idaho pea and lentil producers annually, and once every five (5) years, commencing May 1, 1970, poll each grower as to the advisability of continuing the commission. If a majority of the growers representative of a majority of the pounds produced request a repeal of this act, the commission shall at the next session of the legislature request a repeal.

SECTION 2. That Section 22-3511, Idaho Code, be, and the same is hereby amended to read as follows:

22-3511. COMMISSION ACCEPTING GRANTS, DONATIONS AND GIFTS. — The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act shall be paid to the Idaho pea and lentil commission and shall be deposited into the "Idaho Pea and Lentil Commission Fund" which is hereby created in the office of the state treasurer, state of Idaho, in a bank account in the name of the Idaho pea and lentil commission, and such moneys to be kept in said "Idaho Pea and Lentil Commission Fund" shall be kept in such Idaho pea and lentil commission account and are hereby appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this act.

SECTION 3. That Section 22-3515, Idaho Code, be, and the same is
hereby amended to read as follows:

22-3515. IMPOSITION OF TAX ASSESSMENT. — (1) From and after the first day of June, 1965, there is hereby levied and imposed a tax an assessment of four cents ($0.04) per cwt. on lentils, three cents ($0.03) per cwt. on dry green and yellow and other smooth varieties of peas, two cents ($0.02) per cwt. on Austrian winter varieties of peas and two cents ($0.02) per cwt. on smooth green and yellow seed peas harvested after July 1, 1965, dockage free weight, grown in the state of Idaho and sold or contracted through commercial channels, and each and every crop grown thereafter, which tax assessment shall be due on or before the time when such peas and lentils are first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule or regulation prescribe.

(2) The tax assessment shall be levied and assessed to the grower at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower at the time of sale or in case of a lienholder who may possess such peas or lentils under his lien, the tax-assessment shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the peas or lentils are pledged or mortgaged. The tax assessment shall be deducted as provided in this section whether the peas or lentils are stored in this or any other state. The commission may, however, permit any federal corporation, such as the Commodity Credit Corporation, to waive its responsibility for the collection of the tax assessment, provided the amount of the tax assessment is one dollar ($1) or less.

(3) The tax assessment shall be levied on peas and lentils grown and delivered on seed or grower contracts. The tax assessment shall be levied and assessed to the grower at the time of settlement and shall be deducted by the seed company, corporation, cooperative, partnership, or person from the price paid to the grower at the time of settlement for fulfillment of conditions set forth in grower contracts.

(4) The tax assessment shall not be levied on peas and lentils retained and used by the grower for his own seed and feed.

(5) The tax assessment constitutes a lien prior to all other liens and encumbrances upon such peas or lentils except liens which are declared prior by operation of a statute of this state.

SECTION 4. That Section 22-3516, Idaho Code, be, and the same is hereby amended to read as follows:

22-3516. DELIVERY OF INVOICE VOUCHERS TO GROWERS. —
(1) The purchaser, at the time of settlement, shall make and deliver a copy of each settlement voucher for each purchase to the grower.

(2) The reports to the commission shall be on forms and in such numbers as prescribed and supplied by the commission and shall show at least:

(a) The name or names and address or addresses of the grower and seller.
(b) The name and address of purchaser.
(c) The number of pounds of peas and lentils sold, varieties of peas and/or lentils, and the rate of assessment.
(d) The report shall be legibly written and shall have no corrections or erasures on the face thereof.

(3) Unlawful or willful alteration of an invoice shall constitute a misdemeanor.

SECTION 5. That Section 22-3517, Idaho Code, be, and the same is hereby amended to read as follows:

22-3517. PAYMENT OF TAX ASSESSMENT — DISPOSITION OF RECEIPTS — CONTINUING APPROPRIATION. — (1) The tax assessment imposed in this act shall be paid by the first purchaser to the commission. The commission shall receipt the purchaser thereof and promptly turn the moneys over to the state treasurer, who shall deposit the moneys in the general fund of the state to the credit of a special account to be known as the "Idaho Pea and Lentil Commission Fund," which fund is hereby created in the office of the state treasurer of the state of Idaho a bank account in the name of the Idaho pea and lentil commission. The commission may adopt, rescind, modify and amend regulations not inconsistent with this act, related to the payment and collection of the tax assessment provided for in the act.

(2) All moneys received under the provisions of this act shall be paid to the Idaho pea and lentil commission to be deposited into the "Idaho Pea and Lentil Commission Fund" and are hereby appropriated a bank account in the name of the Idaho pea and lentil commission and made available for defraying the expenses or repaying indebtedness of the commission in carrying out the provisions of this act.

(3) All salaries, costs and expenses incurred by the commission in performing its duties and the exercise of its powers under this act shall be paid out of such "Idaho Pea and Lentil Commission Fund" in the following manner: Vouchers, therefore, shall be submitted by the commission to the state auditor and upon approval by the state board of examiners, the state...
auditor shall draw his warrant upon the "Idaho Pea and Lentil Commission Fund" in payment thereof (thereafter) bank account of the Idaho pea and lentil commission.

(4) All moneys received by the commission from any source, except the amount of cash kept for each day's needs, shall be deposited as soon as possible in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such accounts and such banks or trust companies.

(5) No moneys shall be withdrawn from or paid out of such accounts except upon order of the commission, and upon checks or other orders upon such accounts signed by such member of the commission as the commission designates, and countersigned by such other member, officer or employee of the commission as the commission designates. A receipt, voucher or other written record, showing clearly the nature and items covered by the check or other order, shall be kept.

SECTION 6. That Section 22-3518, Idaho Code, be, and the same is hereby amended to read as follows:

22-3518. PENALTIES. — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than $300 or imprisonment not to exceed 90 days, or both. Fines collected for violation of this act shall be paid into the "Idaho Pea and Lentil Commission Fund."

SECTION 7. (1) Funds held by the state of Idaho on the effective date of this act in the "Idaho pea and lentil commission fund" shall be, and hereby are, transferred therefrom to the depository or depositories selected under this act by the commission, and the treasurer of the state of Idaho is hereby directed to transfer such funds.

(2) Equipment, supplies and other personal property belonging to the state of Idaho on the effective date of this act which were purchased with or acquired by moneys from the "Idaho pea and lentil commission fund", shall be, and hereby are, transferred to the Idaho pea and lentil commission. All state departments, agencies and offices affected by such transfer are authorized and directed to enter such transfer on their books, records and accounts.

SECTION 8. This act shall be in full force and effect on and after July 1, 1971.

Approved February 13, 1971.
CHAPTER 24
(H. B. No. 40)

AN ACT
AMENDING CHAPTER 37, TITLE 39, IDAHO CODE, BY ADDING A NEW SECTION THERETO TO BE KNOWN AND DESIGNATED AS SECTION 39-3702, IDAHO CODE, RELATING TO EXCLUSION OR MODIFICATION OF WARRANTIES IN RELATION TO PROCURING, PROCESSING, STORING, DISTRIBUTING AND USE OF WHOLE BLOOD, PLASMA, BLOOD PRODUCTS, AND BLOOD DERIVATIVES, DECLARING IT TO BE A SERVICE AND NOT A SALE OF THE PRODUCT SUBJECT TO IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS; DECLARING THE PUBLIC POLICY; AND DECLARING AN EMERGENCY.

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

SECTION 1. Declaration of policy. The availability of whole blood, plasma, blood products and blood derivatives being important to the health and welfare of the people of the state of Idaho, it is hereby declared to be the public policy of the state that the health and welfare of the people will be promoted by limiting the legal liability arising out of the scientific procedures relating to blood and its use to instances of negligence or willful misconduct, and to remove such services from the imposition of any legal liability without fault as more particularly hereinafter set forth.

SECTION 2. That Chapter 37, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 39-3702, Idaho Code, and to read as follows:

39-3702. EXCLUSION OR MODIFICATION OF WARRANTIES ON BLOOD SERVICES. — The procurement, processing, storage, distribution, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, into the human body for any purpose whatsoever is declared to be the rendering of a service by any person or entity (except a paid blood donor or a blood bank operated for profit) participating therein and does not constitute a sale, whether or not any consideration is given therefor, and the implied warranties of merchantability and fitness for a particular purpose shall not be applicable as to a defect that cannot be detected or removed by, reasonable use of standard established scientific procedures or techniques, except such person or entity shall remain liable for his or its own negligence or willful misconduct only.
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 February 15, 1971

CHAPTER 25
(H. B. No. 101)

AN ACT
RELATING TO VOTER QUALIFICATIONS IN ELECTIONS FOR GENERAL OBLIGATION BONDS, AMENDING SECTIONS 31-1905, 31-3502, 33-404, 39-1339, 39-1342, 42-3222, 50-1026, AND 70-1716, IDAHO CODE, BY STRIKING THEREFROM PROPERTY OWNERSHIP QUALIFICATIONS FOR ELECTORS VOTING IN ELECTIONS HELD FOR THE PURPOSE OF AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-1905, Idaho Code, be, and the same is hereby amended to read as follows:

31-1905. NOTICE OF BOND ELECTION — QUALIFICATIONS OF VOTERS. — If the question of bonding the county as herein provided is to be submitted to the voters at a special election held for that purpose, the board shall cause printed or written notices of the intention to hold such an election to be posted in two (2) or more conspicuous places at each precinct of the county, and shall also cause a printed notice of the intention to hold such an election to be published in one (1) or more newspapers of the county, if any newspapers are printed therein. The said notices shall recite the action of the board in deciding to bond the county, the purpose thereof, and the amount of the bonds that are to be issued, and shall also specify the day of the election, the time during which the polls shall be open, which shall not be less than six (6) hours; the notices posted in each of the several precincts shall also name the place of holding such election. The notices herein provided for shall be posted, or posted and published, at least twenty (20) days before such election.

No person shall vote at any such bond election who is not:
1. A qualified elector of the district; and,
2. A bona fide resident thereof for more than thirty (30) days last past; and,
3. A taxpayer; or,
   a. The wife or husband of a taxpayer.

A taxpayer within the meaning of this section is a person whose name appears on the tax rolls of the county and is there assessed with unexempt real property owned and subject to taxation within the boundaries of the district.

SECTION 2. That Section 31-3502, Idaho Code, be, and the same is hereby amended to read as follows:

31-3502. ELECTION FOR ISSUANCE OF BONDS. — The county commissioners may, when they deem the welfare of their counties requires it, or when petitioned thereto by a number of resident taxpayers of their respective counties equal to five per cent (5%) of the number of persons voting for the secretary of state of the state of Idaho, at the election next preceding the date of such petition, submit to the qualified electors of said county at any general election, or at a special election called for such purpose, the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing such hospital, hospital grounds, nurses' homes, superintendent's quarters, or any other necessary buildings, and equipment, and may on their own initiative submit to the qualified electors of the county at any general election the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing for the extension and enlargement of existing hospital, hospital grounds, nurses' homes, superintendent's quarters, or any other necessary buildings, and equipment, and when authorized thereto by two-thirds (2/3) vote at such election, shall issue and sell such coupon bonds and use the proceeds therefrom for the purposes authorized by such election. Said proposition may be submitted to the qualified electors at a special election called for the purpose if the board of county commissioners shall by resolution so determine. No person shall be qualified to vote at any election held under the provisions of this section unless he shall possess all the qualifications required of electors under the general laws of this state and is a taxpayer in such county.

The board shall be governed in calling and holding such election and in the issuance and sale of such bonds, and in the providing for the payment of
the principal and interest thereon by the provisions of sections 31-1901–31-1909, inclusive, and by the provisions of the "Municipal Bond Law" of the state of Idaho, chapter 2 of title 57; provided, however, that when such bonds have been issued and sold and a period of two (2) years or more has elapsed from the date of sale of said bonds and for any reason the proceeds from the sale of said bonds or other moneys appropriated for the purpose for which said bonds were issued, have not been used for the purpose for which they were appropriated or said bond issue made, the board of county commissioners may, with the written consent of all the bondholders first having been obtained, submit to the qualified electors, as herein defined, the question of spending such moneys for a definite purpose. The purpose for which it is decided to spend such moneys shall be clearly and plainly stated on the ballot. If a two-thirds (2/3) majority of the qualified electors shall vote in favor of spending such moneys for the purpose stated, the board of county commissioners shall proceed in the same manner as if such different purpose had been the original purpose for such bond issue or appropriation. Provided, further that if less than a two-thirds (2/3) majority of the qualified electors shall vote in favor of spending such moneys for such different purpose, or if no such election should be had, when all of the bonds shall have been retired, such excess moneys shall be placed in the general fund.

SECTION 3. That Section 33-404, Idaho Code, be, and the same is hereby amended to read as follows:

33-404. QUALIFICATIONS OF SCHOOL ELECTORS. — Any person voting, or offering to vote, in any school election must be, at the time of the election:

1. An elector within the meaning of article 6, section 2 of the constitution of the state of Idaho;

2. A resident of the district and, in the case of election of trustees, a resident of the same trustee zone as the candidate or candidates for school district trustees for whom he offers to vote;

In addition to the foregoing qualifications, a school elector shall have executed, in writing and immediately before voting, a form of elector's oath attesting that he or she possesses the qualifications of a school elector prescribed by this section. The forms of electors' oaths shall be included in the records and returns of the board of election.

In any school election held on a proposal to incur, increase or assume any indebtedness, or to approve a levy for any school plant facilities reserve-
fund, any person voting, or offering to vote in such election shall have and possess the qualifications set forth in 1 and 2, above, and in addition there to be a taxpayer on real property situate in the district, or the spouse of such taxpayer.

For the purpose of this section, a taxpayer on real property shall be one who pays taxes, or who is obligated as owner or contract purchaser to pay taxes, on real property. The term "real property" as used in this section shall include dwelling houses permanently affixed to the real property on which they are situated and mobile homes provided that the taxpayer has lived in the mobile home continuously at the same location for two (2) years prior to the election in which the taxpayer is voting.

SECTION 4. That Section 39-1339, Idaho Code, be, and the same is hereby amended to read as follows:

39-1339. CREATION OF INDEBTEDNESS FOR WORKS OR IMPROVEMENTS — ELECTION ON PROPOSED INDEBTEDNESS. — Whenever the board of the hospital district shall by resolution, determine that the interest of said district and the public interest or necessity demand, the acquisition, construction, installation, or completion of any works or other improvements of facilities or the construction, installation and maintenance of a hospital, hospital grounds, nurses' quarters and equipment, or for the enlargement, improvement and acquisition of existing hospital, hospital grounds, nurses' quarters and equipment, or the making of any contract with the United States or other persons or corporations, public or private, municipalities or governmental subdivisions to carry out the objects or purposes of said district requiring the creation of an indebtedness of $5,000.00 or more, and in any event when the indebtedness will exceed the income and revenue provided for the year, the board shall order the submission of the proposition of issuing such obligations or bonds or creating other indebtedness to the qualified electors who are taxpayers of the district at an election held for that purpose. The declaration of public interest or necessity, herein required, and the provision for the holding of such election may be included within one (1) and the same resolution, which resolution, in addition to such declaration of public interest or necessity shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolutions shall also fix the date upon which such election shall be held, and
the manner of holding the same, and the method of voting for or against the
incurring of the proposed indebtedness; such resolution shall also fix the
compensation to be paid the officers of the election and shall designate the
polling place or places and shall appoint for each polling place, from the
qualified electors who are taxpayers of the district, the officers of such
election, consisting of three (3) judges, one (1) of whom shall act as the
clerk, provided, however, that no district shall issue or have outstanding its
coupon bonds in excess of ten per cent (10%) of the assessed valuation of
the real estate and personal property within the said district, according to
the assessment of the year preceding any such issuance of such evidence of
indebtedness for any or all of the propositions specified in this election,
provided, however, that such bonds shall not be issued, nor shall any
indebtedness be incurred, at any time that there shall be a bond issue
outstanding and unpaid for the construction, acquisition or maintenance of a
county hospital in the county in which such district is organized.

SECTION 5. That Section 39-1342, Idaho Code, be, and the same is
hereby amended to read as follows:

39-1342. INDEBTEDNESS INCURRED UPON FAVORABLE VOTE
RESUBMISSION OF PROPOSITION NOT RECEIVED FAVORABLY. —
In the event that it shall appear from said returns that two-thirds (2/3) of the
qualified electors who are taxpayers of the district voting at such election
shall have voted in favor of such proposition or any proposition submitted
hereunder at such election, the district shall thereupon be authorized to
incur such indebtedness or obligations, enter into such contract or issue and
sell bonds of the district, as the case may be, all for the purpose or purposes,
and object or objects provided for in the propositions submitted hereunder
and in the resolution therefor and in the amount so provided at a rate of
interest not exceeding the rate of interest recited in such resolution. The
submission of the proposition of incurring such obligation or bonded or
other indebtedness at such an election shall not prevent or prohibit
submission of the same, or other propositions, at subsequent election or
elections called for such purpose at any time.

SECTION 6. That Section 42-3222, Idaho Code, be, and the same is
hereby amended to read as follows:

42-3222. INDEBTEDNESS OF FIVE THOUSAND DOLLARS OR
MORE SUBMISSION OF PROPOSITION TO ELECTORATE. —
Whenever any board shall, by resolution, determine that the interest of said
district and the public interest or necessity demand the acquisition,
construction, installation or completion of any works or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, public or private, municipalities, or governmental subdivisions, to carry out the objects or purposes of said district, requiring the creation of an indebtedness of $5,000 or more, and in any event when the indebtedness will exceed the income and revenue provided for the year, said board shall order the submission of the proposition of issuing such obligations or bonds, or creating other indebtedness to the qualified electors who are taxpayers of the district at an election held for that purpose. A taxpayer, within the meaning of and as used in this section, is a person who, or whose spouse, is obligated as owner or as a contract purchaser at a designated time or event, to pay taxes on real property within the district. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place or places and shall appoint, for each polling place from the electors of the district, the officers of such election consisting of three judges, one of whom shall act as clerk.

SECTION 7. That Section 50-1026, Idaho Code, be, and the same is hereby amended to read as follows:

50-1026. CITY BONDS — ORDINANCE — ELECTION. Whenever the city council of a city shall deem it advisable to issue the coupon bonds of such city, the mayor and council shall provide therefor by ordinance, which shall specify and set forth all the purposes, objects, matters and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to pay the interest on such proposed bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting the same as required by the constitution and laws of the state of Idaho.
The ordinance shall also provide for holding an election, of which thirty (30) days notice shall be given in the official newspaper of the city. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in Ordinance No. ", and "Against issuing bonds to the amount of dollars for the purpose stated in Ordinance No. ". If at such election, held as provided in this chapter, two thirds (2/3) of the qualified electors who pay taxes on real property within such city voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds shall be issued in the manner provided by the laws of the state of Idaho.

SECTION 8. That Section 70-1716, Idaho Code, be, and the same is hereby amended to read as follows:

70-1716. GENERAL OBLIGATION BONDS — ELECTIONS. — Each port district may, with the assent of two-thirds (2/3) of the qualified voters of the district who are also holders of title or evidence of title to lands located in, and subject to assessment within such district, or the wife or husband of such holders of title or evidence of title, voting thereon at a general or special port election called for that purpose, contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor, provided that total indebtedness of the district at any such time, excluding that indebtedness evidenced by revenue bonds, shall not exceed five percent (5%) of the assessed valuation of the taxable property in the district to be ascertained by the last assessment for state and county purposes previous to incurring the indebtedness.

The district may issue general district bonds evidencing any such indebtedness, payable at any time not exceeding thirty (30) years from the date of the bonds.

SECTION 9. 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 February 16, 1971
CHAPTER 26
(H. B. No. 99)

AN ACT
RELATING TO CERTAIN RETIREMENT FUNDS AND THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; PROVIDING DEFINITIONS; PROVIDING FOR MERGING CERTAIN CITY RETIREMENT FUNDS WITH THE PUBLIC EMPLOYEE RETIREMENT SYSTEM BY CONTRACT; PROVIDING FOR AN EMPLOYER TO CONTRIBUTE TO THE COST OF BENEFITS UNDER THE SYSTEM AND PROVIDING FOR ADJUSTMENTS, AND PROVIDING FOR A SPECIAL TAX LEVY TO PAY FOR SUCH CONTRIBUTIONS; PROVIDING FOR THE TRANSFER OF ASSETS AND LIABILITIES FROM A CITY SYSTEM TO AN EMPLOYEE SYSTEM; PROVIDING FOR BENEFITS FOR CITY MEMBERS; AMENDING SECTION 50-1512, IDAHO CODE, RELATING TO TAX LEVIES FOR POLICEMAN'S RETIREMENT FUND, BY CHANGING THE MILL LEVY, AND BY CHANGING THE EMPLOYEE CONTRIBUTION; AMENDING CHAPTER 15, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AND DESIGNATED SECTION 50-1525, IDAHO CODE, PROVIDING FOR MANDATORY ACTUARIAL STUDIES; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. As used in this act, each of the terms defined shall have the meaning given in this section or in section 59-1302, Idaho Code, unless a different meaning is clearly required by the context.

(a) "Board" means the retirement board of the employee system.

(b) "City member" means a person receiving benefits or establishing the right to receive benefits from a city system.

(c) "City system" means the Boise city employee’s retirement system and any policeman’s retirement system established and operated by virtue of any city ordinance, charter, or pursuant to the provisions of chapter 15, title 50, Idaho Code.

(d) "Employee system" means the retirement system created by and existing through the provisions of chapter 13, title 59, Idaho Code.

(e) "Employer" means a city having a city system.
SECTION 2. Any city having a city system may elect to merge its city system with the employee system by the enactment of an ordinance declaring such intention; the provisions of section 50-1503, Idaho Code, and section 50-1524, Idaho Code, notwithstanding. Thereupon the board of the employee system may upon such terms as are set forth in a contract between the board and employer integrate the city system of the employer into the employee system.

SECTION 3. (a) Each employer shall contribute to the cost of benefits under the system, pursuant to section 59-1330, Idaho Code. On the date of establishment and from time to time thereafter, the board shall conduct studies of those benefits payable under section 5 of this act which are in excess of those otherwise earned in accordance with chapter 13, title 59, Idaho Code. If, for any such employer, such study indicates the value of such benefits exceeds the amount of money and property transferred in accordance with section 4 of this act, said amount being adjusted for interest and for any previous payments in accordance with this section and section 5 of this act, such excess value shall be computed as an additional contribution to be paid by such employer. In the event said amount so adjusted shall exceed said value of such benefits, the excess shall be immediately payable to such employer by the employee system.

(b) Each such employer may levy a special tax on all assessed property within its corporate limits solely for the purpose of paying all or a portion of such contributions.

SECTION 4. On its date of establishment all of the funds, assets, liabilities, duties, obligations and rights of the governing board of the city system and of all city members being integrated into the employee system shall be transferred to the employee system. The governing board of such a city system is by this act abolished. On and after the date of establishment, benefits payable to annuitants and beneficiaries of such a city system shall become the obligation of the employee system and shall be paid in the same amount as established by such a city system, except that on and after the date of establishment future monthly benefits shall be subject to the provisions of section 59-1319A, Idaho Code. The funds of such a city system are by this act abolished. The custodian of the fund of such a city system shall transfer all cash on hand in such fund to the state treasurer for deposit in the clearing account of the employee system, and all evidence of indebtedness arising from invested money of said fund to the funding agent as designated by the board. The money and property of such funds shall become the money and property of the employee system.
SECTION 5. Benefits paid city members or their beneficiaries shall never be less than the benefits they would have received from the city systems if such systems had not been integrated with the employee system.

SECTION 6. That Section 50-1512, Idaho Code, be, and the same is hereby amended to read as follows:

50-1512. TAX LEVY - SALARY DEDUCTIONS. - Any city having established a policeman's retirement fund may levy a tax not to exceed two (2) four (4) mills on all assessed property within the corporate limits of the city. Said taxes shall be placed by the city treasurer in a fund to be known as the "policeman's retirement fund." Sums certain, as determined by the governing body, not to exceed four per cent (4%) eight per cent (8%) per month, may be deducted from the salary of each police officer and placed in said "policeman's retirement fund" by the treasurer.

SECTION 7. That Chapter 15, Title 50, Idaho Code, be, and the same is hereby amended by the addition of a new section, to be known and designated as Section 50-1525, Idaho Code, and to read as follows:

50-1525. MANDATORY ACTUARIAL STUDY. - Any city establishing and maintaining a policeman's retirement fund pursuant to the provisions of this chapter shall, at its own expense, conduct an actuarial study biennially hereafter for the purpose of determining the actuarial soundness of such fund beginning January 1, 1972, and on January 1 of each two (2) years thereafter. Copies of such studies shall be submitted to the secretary of state for the state of Idaho and to the secretary of the local police retirement fund board.

SECTION 8. The provisions of this act are hereby declared 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 remaining portions of this act.

SECTION 9. This act shall be in full force and effect on and after July 1, 1971.

Approved February 16, 1971
CHAPTER 27  
(H. B. No. 86)  

AN ACT  
AMENDING SECTION 39-423, IDAHO CODE, RELATING TO THE  
BUDGET COMMITTEE OF A PUBLIC HEALTH DISTRICT, BY PROVIDING THAT THE BUDGET COMMITTEE SHALL MEET ON OR BEFORE THE FIRST MONDAY IN DECEMBER.  

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

SECTION 1. That Section 39-423, Idaho Code, be, and the same is hereby amended to read as follows:  

39-423. BUDGET COMMITTEE OF PUBLIC HEALTH DISTRICT. — The chairman of the boards of county commissioners located within the public health district are hereby constituted as the budget committee of the public health district.  

The district board will submit to the budget committee on the first Monday in November of each year the preliminary budget for the public health district and the estimated cost of each county, as determined by the provisions of section 39-425.  

On or before the first Monday in December, there will be held at a time and place determined by the budget committee a budget committee meeting and public hearing upon the proposed budget of the district. At such meeting, the state board of health shall submit a tentative projection of state aid available as determined in compliance with the provisions of section 39-425.  

Between the first Monday in December and the first Monday in January, a budget for the public health district shall be agreed upon and approved by a majority of the budget committee. Such determination shall be binding upon all counties within the district and the district itself.  

Approved February 16, 1971
AN ACT

AMENDING SECTION 63-909, IDAHO CODE, RELATING TO A TAX LEVY FOR COUNTY PARKS AND RECREATION FUND, BY PROVIDING THAT FUNDS MAY BE ACCUMULATED IN THE PARKS AND RECREATION FUND.

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

SECTION 1. That Section 63-909, Idaho Code, be, and the same is hereby amended to read as follows:

63-909. ASSESSED COUNTY TAX LEVY - PARKS AND RECREATION FUND. - (1) The board of county commissioners of each county in this state may levy annually upon all taxable property of its county, a tax for the acquisition, maintenance and operation of public parks or public recreational facilities, to be collected and paid into the county treasury and apportioned to a fund to be designated as the “parks and recreation fund,” which is hereby created, and such board may appropriate otherwise unappropriated funds for such purposes. No levy made under this section shall exceed five cents ($0.05) on each one hundred dollars ($100) of the assessed valuation of such property.

(2) Any funds unexpended from the “parks and recreation fund”, or any funds unexpended from the current year’s certified parks and recreation budget may be retained in, or deposited to, the “parks and recreation fund” for the purpose of future land acquisition, park expansion or improvement, or the acquisition of operating equipment. The maximum accumulation of funds allowable shall not exceed twice the amount of money provided by the levy authorized in subsection (1) of this section.

Approved February 17, 1971
AN ACT
AMENDING SECTION 34-624, IDAHO CODE, RELATING TO ELECTION OF PRECINCT COMMITTEEMEN AND QUALIFICATIONS, BY CHANGING THE AGE QUALIFICATION FROM TWENTY-ONE YEARS TO EIGHTEEN YEARS.

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

SECTION 1. That Section 34-624, Idaho Code, be, and the same is hereby amended to read as follows:

34-624. ELECTION OF PRECINCT COMMITTEEMEN — QUALIFICATIONS. — (1) At the primary election, 1972, and every alternate year thereafter, a precinct committeeman for each political party shall be elected in every voting precinct within each county.

(2) No person shall be elected to the office of precinct committeeman unless he has attained the age of eighteen (18) years at the time of his election, is a citizen of the United States and shall have resided within the voting precinct for a period of one (1) year next preceding his election.

(3) Each candidate shall file a declaration of candidacy with the county clerk. Each declaration shall have attached thereto a petition which contains the signatures of not less than five (5) nor more than ten (10) qualified electors from his precinct.

(4) No filing fee shall be charged any candidate at the time of his filing his declaration of candidacy.

Approved February 19, 1971.
CHAPTER 30
(H. B. No. 80)

AN ACT
RELATING TO EDUCATION, AMENDING SECTION 33-805, IDAHO CODE, BY PROVIDING THAT THE AVERAGE DAILY ATTENDANCE COMPUTATION FOR THE SCHOOL EMERGENCY FUND LEVY SHALL BE ON THE NUMBER IN ATTENDANCE FOR THE SAME PERIOD OF THE PRECEDING SCHOOL YEAR RATHER THAN THE TOTAL SHOWN ON THE LAST ANNUAL REPORT.

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

SECTION 1. That Section 33-805, Idaho Code, be, and the same is hereby amended to read as follows:

33-805. SCHOOL EMERGENCY FUND LEVY. — Before the second Monday of September in each year, the board of trustees of any school district which qualifies under the provisions of this section may certify its need hereunder to the board of county commissioners in each county in which the district may lie, and request a school emergency fund levy upon all taxable property in the district.

The board of trustees shall compute the number of pupils in average daily attendance in the schools of the district as of such date, and if there be pupils in average daily attendance above the total shown on said last annual report number in average daily attendance for the same period of the school year immediately preceding the board shall:

1. Divide the total of the foundation program allowance based on said last annual report by the total number of pupils in average daily attendance shown thereon;

2. Multiply the quotient so derived by the number of additional pupils in average daily attendance.

The number of pupils in average daily attendance for each period and the amount so computed shall be certified to the board of county commissioners of the county in which the district lies.

In the case of a joint district, the board of trustees shall certify to the board of county commissioners of each county in which the district lies, to
each, that proportion of the amount computed, as hereinabove, as the assessed value of taxable property within the district situate in each such county bears to the total assessed value of all taxable property in the district.

After receiving the amounts certified, as hereinabove provided, the board, or boards, of county commissioners shall determine the levy according to section 63-907, Idaho Code, as amended; and the proceeds of any such levy shall be credited to the general fund of the district.

Approved February 20, 1971.

CHAPTER 31
(S. B. No. 1067)

AN ACT
AMENDING CHAPTER 3, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-342, IDAHO CODE, TO PROVIDE THAT IN ADDITION TO OTHER MUNICIPAL POWERS A CITY OWNING AND OPERATING AN ELECTRIC DISTRIBUTION SYSTEM MAY DISPOSE OF SUCH POWER AND ENERGY TO THE UNITED STATES DEPARTMENT OF INTERIOR BY AND THROUGH THE BONNEVILLE POWER ADMINISTRATOR THROUGH EXCHANGE, NET BILLING OR ANY ARRANGEMENT, AND PROVIDING THAT THIS ACT IS NOT SUBJECT TO THE LIMITATIONS CONTAINED IN SECTIONS 50-325 AND 50-327, IDAHO CODE.

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

SECTION 1. That Chapter 3, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 50-342, Idaho Code, and to read as follows:

50-342. ELECTRIC POWER − PURCHASE OR DISPOSAL. − In addition to the powers otherwise conferred on cities of this state, a city owning and operating an electric distribution system shall have the authority to purchase electric power and energy for the purpose of disposing of such power and energy to the United States of America, Department of the Interior, acting by and through the Bonneville Power administrator, through exchange, net billing or any arrangement which is used for supplying the needs of the city for electric power or energy, and such authority shall not be subject to the requirements, limitations, or procedures contained in sections 50-325 and 50-327, Idaho Code.

Approved February 20, 1971.
AMENDING SECTION 31-4306, IDAHO CODE, RELATING TO RECREATION DISTRICT ELECTIONS, BY PROVIDING THAT THE ELECTION SHALL BE IN NOVEMBER OF EACH EVEN NUMBERED YEAR; AMENDING SECTION 31-4314, IDAHO CODE, RELATING TO POWER TO INCUR DEBT OF A RECREATION DISTRICT, BY PROVIDING THAT THE BOARD MAY INCUR DEBTS IN THE FISCAL YEAR OF ORGANIZATION, AND EXEMPTING RECREATION DISTRICTS FROM THE PROVISIONS OF SECTION 63-921, IDAHO CODE, IF THE DISTRICT IS CREATED PRIOR TO JUNE 1; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-4306, Idaho Code, be, and the same is hereby amended to read as follows:

31-4306. ELECTION OF DIRECTORS. — An election of directors shall be held in each district on the Tuesday succeeding the first Monday of November of each even numbered year. Such election shall be held as nearly as practicable in conformity with the general election laws of the state. No prior registration shall be required but each person offering to vote shall be required to sign an elector’s oath in the usual form but shall have added thereto the words “and I am a resident within the boundaries of such recreation district.” The polls at such election shall be open from 12:00 o’clock noon to 8:00 o’clock p.m. The board shall have power to make such rules and regulations for the conduct of such election as are not inconsistent with such general election laws and the provisions of this act. Before the notice of such election is given, the board shall divide the district into three (3) subdivisions as nearly equal in population as possible to be known as director’s sub-district one (1), two (2) and three (3). Nominations at such election shall be made in writing, shall state the name of the nominee, shall state the director’s sub-district for which such nominee is nominated, shall be signed by not less than five (5) nor more than ten (10) qualified electors
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of the district, and shall be filed with the secretary at least ten (10) days prior to the date of such election.

SECTION 2. That Section 31-4314, Idaho Code, be, and the same is hereby amended to read as follows:

31-4314. LIMITATION OF POWER TO INCUR DEBT. — Neither the board nor any officer shall have power to incur any debt or liability on behalf of the district, whether by issuance of bonds or otherwise, in excess of the express provisions of this act and any such debt or liability so incurred shall be void; except that for the purpose of organization or for any of the purposes of this act, the board may before making the tax levy in the fiscal year after of organization, incur debts not exceeding in the total a sum equal to two (2) mills on each one dollar ($1.00) in assessed value of the taxable property within the district. The provisions of section 63-921, Idaho Code, shall not apply to any recreation district if that district is created prior to June 1.

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 February 27, 1971

CHAPTER 33
(S.B. No. 1026)

AN ACT
AMENDING SECTION 33-1217, IDAHO CODE, REQUIRING UNUSED SICK LEAVE TO BE ACCUMULATED, REQUIRING TRANSFER OF ACCUMULATED SICK LEAVE BY ANOTHER EMPLOYING DISTRICT; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 33-1217A, IDAHO CODE, PROVIDING FOR THE USE OF SICK LEAVE; AND PROVIDING AN EFFECTIVE DATE FOR THIS ACT.

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

SECTION 1. That Section 33-1217, Idaho Code, be, and the same is hereby amended to read as follows:

33-1217. ACCUMULATION OF UNUSED SICK LEAVE TRANSFER SICK LEAVE WHEN DISTRICTS DIVIDE OR
CONSOLIDATE. — Unused sick leave may be accumulated from year to year as long as an employee remains continuously in the service of the same school district, to a maximum of ninety (90) days accumulation of leave. Termination of employment in any district shall terminate sick leave rights, both current and accumulated, except when such employee is employed by another district during the school year immediately following the year of termination; and the accumulated leave shall be secured for, and credited to, the employee by the district thereafter employing such employee. Whenever new school districts are formed by the consolidation or by the division of existing districts, the accumulated sick leave of any teachers who continue in service in the new district, or districts created by such consolidation or division shall have such accumulated sick leave secured for, and credited to, them in such newly created district, or districts.

SECTION 2. That Chapter 12, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 33-1217A, Idaho Code, and to read as follows:

33-1217A. PROVIDING FOR THE USE OF SICK LEAVE. — Any certificated employee of a school district when drawing sick leave pay shall first use all annual sick leave as provided in section 33-1216, Idaho Code, and all unused accumulated sick leave from the school district where currently employed as provided in section 33-1217, Idaho Code, and use accumulated sick leave secured for and credited to such employee from another school district only when all other sick leave has been exhausted.

SECTION 3. This act shall be in full force and effect on and after July 1, 1971.

Approved February 27, 1971.

CHAPTER 34
(S. B. No. 1066)

AN ACT
AMENDING SECTIONS 14-414, 14-425, AND 14-427, IDAHO CODE, TO STRIKE OBSOLETE MATERIAL, AND MAKE THE SECTIONS CONFORM TO LEGISLATIVE INTENT EXPRESSED IN THE TITLE TO HOUSE BILL NO. 552, SECOND REGULAR SESSION, FORTIETH IDAHO LEGISLATURE.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 14-414, Idaho Code, be, and the same is hereby amended to read as follows:

14-414. RECEIPT FOR PAYMENT OF TAX — DISTRIBUTION PROHIBITED UNTIL TAX IS PAID. — Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one (1) copy of which he shall deliver to the person paying said tax, and the original and one (1) copy thereof he shall immediately send to the commissioner of finance state tax commission, whose duty it shall be to charge the treasurer so receiving the tax with fifty ninety per cent (50%90%) of the amount thereof, and said commissioner of finance state tax commission shall retain one (1) of the receipts and the other (1) it shall countersign and seal with the seal of his its office, and immediately transmit to the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless a receipt so sealed and countersigned by the commissioner of finance state tax commission, or a copy thereof, certified by him it, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents (50¢), be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

SECTION 2. That Section 14-425, Idaho Code, be, and the same is hereby amended to read as follows:

14-425. COUNTY TREASURER TO COLLECT TAXES. — The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act. Fifty Ten per cent (50%10%) thereof shall be credited to the current expense fund of the county, and fifty ninety per cent (50%90%) thereof (excepting such moneys as the county treasurer may pay out from time to time pursuant to the provisions of this act) shall be paid to the state treasurer, who shall issue a receipt therefor. The county treasurer shall make a report under oath of the collection and payment of all taxes collected under the provisions of this act to the commissioner of finance state tax commission between the first and fifteenth days of June and December of each year, stating for what estate or estates paid, and in such form and containing such particulars as the commissioner of finance state tax commission may prescribe; and for all such taxes collected by him it and not paid to the state treasurer by the first day of July and January of each
year, he shall pay interest at the rate of ten per cent (10%) per annum. All moneys so paid by the county treasurer to the state treasurer shall be paid into the state treasury to the credit of the water pollution control general fund of the state. In the event any tax or taxes arising under the provisions of this act become delinquent and are unpaid, the commissioner of finance shall have the right and is hereby empowered to institute on behalf of the state an appropriate action for the collection of the same, in any court or courts having jurisdiction.

SECTION 3. That Section 14-427, Idaho Code, be, and the same is hereby amended to read as follows:

14-427. FEES — COMPENSATION AND EXPENSES. — Neither the probate court, county treasurer nor prosecuting attorney shall be entitled to or collect any fees for any services rendered under the provisions of this act, but fifty ten per cent (50% 10%) of the amount of all taxes collected by the county treasurer to be credited to the current expense fund of the county is as herein provided for, shall be in lieu of fees or other charges.

The compensation to be paid the appraisers appointed pursuant to the provision of chapter 4 of title 15, Idaho Code, shall be paid out of the assets of the estate of the decedent; the compensation and expenses to be allowed and paid the inheritance tax appraiser, except as herein otherwise provided, shall be paid on order of the court by the county treasurer out of any moneys in his possession belonging to the state collected under the provisions of this act.

Approved February 27, 1971.

CHAPTER 35
(U. D. No. 68)

AN ACT
AMENDING SECTION 60-105, IDAHO CODE, TO ESTABLISH THE RATE TO BE CHARGED FOR ALL OFFICIAL NOTICES REQUIRED BY LAW TO BE PUBLISHED IN NEWSPAPERS OF THIS STATE.

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

SECTION 1. That Section 60-105, Idaho Code, be, and the same is hereby amended to read as follows:
60-105. RATES FOR OFFICIAL NOTICES. — The rate to be charged for all official notices required by law to be published in any newspaper in this state, by any state, county, municipal official or other person, shall be as follows: thirteen cents (13¢) per column line for 8-point type, fourteen cents (14¢) per column line for 7-point type, and fifteen cents (15¢) per column line for 6-point type for the first insertion, and ten cents (10¢) per column line for each of said type sizes for each subsequent insertion. Two cents ($.02) for each pica in a column line for the first insertion and fifteen cents ($.15) per column line for each subsequent insertion. For table and figure matter the rate shall be twenty cents (20¢) per column line for each of the aforementioned type sizes for the first insertion, and ten cents (10¢) per column line for each subsequent insertion. For table and figure matter, the rate shall be three cents ($.03) for each pica in a column line for the first insertion, and fifteen cents ($.15) per column line for each subsequent insertion. In the event that a column line ends in a one-half (½) pica measurement, the rate for such one-half (½) pica shall be one-half (½) the rate established for a full pica for the type of matter set forth herein. For purposes of this section, a column line shall measure two (2) inches not less than ten and one-half (10½) picas in width and the type used shall not be smaller than 7-point nor greater than 8-point. Use of type smaller than 6-point 7-point for official notices is hereby prohibited. 

Approved February 27, 1971.

CHAPTER 36
(H. B. No. 71)

AN ACT
RELATING TO PRIVILEGED COMMUNICATIONS, AMENDING SECTION 9-203, IDAHO CODE, TO PROVIDE IMMUNITY FROM DISCLOSURE BY COUNSELORS, PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS OF PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS MADE THERETO BY STUDENTS OF PUBLIC OR PRIVATE SCHOOLS IN ANY CIVIL OR CRIMINAL ACTION TO WHICH SUCH STUDENT SO COUNSELED IS A PARTY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. That Section 9-203, Idaho Code, be, and the same is hereby amended to read as follows:

9-203. CONFIDENTIAL RELATIONS AND COMMUNICATIONS. — There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person can not be examined as a witness in the following cases:

1. A husband can not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents.

2. An attorney can not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest can not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon can not, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient.
and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(C) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(D) That if the patient be dead and during his lifetime had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer can not be examined as to communications made to him in official confidence, when the public interests would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

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 February 27, 1971.

CHAPTER 37
(H. B. No. 152)

AN ACT
APPROPRIATING MONEYS FROM THE SOCIAL SECURITY TRUST FUND AND TRANSFERRING SUCH MONEYS TO THE GENERAL
FUND; STATING LEGISLATIVE POLICY REGARDING THE EFFECTIVENESS OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. There is hereby appropriated from the Social Security Trust Fund and transferred to the General Fund the sum of $1,000,000.

SECTION 2. This act is declared to be effective notwithstanding the provisions of section 59-1107, Idaho Code, as such provisions restrict the use of the funds for the purpose of making payments to the United States in accordance with Public Law 734.

SECTION 3. This act shall be in full force and effect on and after July 1, 1971.

Approved February 27, 1971.

CHAPTER 38
(H. B. No. 64)

AN ACT
AMENDING SECTION 63-3035, IDAHO CODE, RELATING TO TIME OF PAYMENT OF WITHHOLDING TAX, BY STRIKING QUARTERLY PAYMENTS AND SUBSTITUTING THEREFOR MONTHLY PAYMENTS ON OR BEFORE THE 25TH DAY OF EACH MONTH; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3035, Idaho Code, be, and the same is hereby amended to read as follows:

63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS – WITHHOLDING, COLLECTION AND PAYMENT OF TAX. – (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this act. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section.
In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

(1) shall be liable to the state of Idaho for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section; and

(2) must make return of and pay to the state tax commission quarterly on the same dates as such payments are made under the Internal Revenue Code monthly on or before the 25th day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this act, he is required to deduct and withhold.

(b) Every employer shall, at the time of each payment made by him to the state tax commission, deliver to the state tax commission a return upon such form as shall be prescribed by said state tax commission showing the total amount of wages, salary, bonus or other emoluments paid to his employees, the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance with the provisions of this section, and such pertinent and necessary information as the state tax commission may require.

Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and at the same time every employer shall file a copy thereof with the state tax commission.

(c) All moneys deducted and withheld by every employer shall immediately upon such deduction be state money and every employer who deducts and retains any amount of money under the provisions of this act shall hold the same in trust for the state of Idaho and for the payment thereof to the state tax commission in the manner and at the times in this act provided. Any employer who does not possess real property situated within the state of Idaho, which, in the opinion of the state tax commission, is of sufficient value to cover his probable tax liability, may be required to
post a surety bond in such sum as the state tax commission shall deem adequate to protect the state.

(d) The provisions of this act relating to additions to tax in case of delinquency, and penalties, shall apply to employers subject to the provisions of this section and for these purposes any amount deducted, or required to be deducted and remitted to the state tax commission under this section, shall be considered to be the tax of the employer and with respect to such amount he shall be considered the taxpayer.

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his taxable income as computed under the provisions of this act, as the same has been or may hereafter be amended, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, but not later than one hundred and twenty (120) days after the filing of each return, refund the amount of the excess deducted. No refund shall be made to an employee who fails to file his return, as required under this act, within two (2) years from the due date of the return in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar ($1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed.

(f) This section shall in no way relieve any taxpayer from his obligation of filing a return at the time required under this act, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 63-3034.

SECTION 2. This act shall be in full force and effect on and after July 1, 1971.

Approved February 27, 1971.
CHAPTER 39
(H. B. No. 114)

AN ACT
AMENDING SECTION 54-1709, IDAHO CODE, PROVIDING FOR THE FEES CHARGED BY THE STATE BOARD OF PHARMACY FOR LICENSING APPLICATIONS BY ESTABLISHING A NEW AND HIGHER EXAMINATION FEE.

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

SECTION 1. That Section 54-1709, Idaho Code, be, and the same is hereby amended to read as follows:

54-1709. FEES. The board of pharmacy shall be entitled to charge and collect the following fees:

For examining an applicant for license as pharmacist, twenty-five dollars ($25.00) fifty dollars ($50.00).

For renewal of license to pharmacist, ten dollars ($10.00) twenty dollars ($20.00), payable annually.

All fees must be paid before the applicant shall be admitted to examination or his name placed upon the register of pharmacists, or before any license or permit or renewal thereof may be issued by the board.

Approved February 27, 1971.

CHAPTER 40
(H. B. No. 115)

AN ACT
AMENDING SECTION 37-2207, IDAHO CODE, RELATING TO THE ISSUING OF PERMITS AND LICENSES TO A PHARMACY, DRUGSTORE OR APOTHECARY SHOP BY PROVIDING A PENALTY FOR DELINQUENT RENEWAL OF A LICENSE OR PERMIT.

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

SECTION 1. That Section 37-2207, Idaho Code, be, and the same is hereby amended to read as follows:

37-2207. PERMITS — RENEWALS — FEES. — Applications for permits required under this act shall be made on a form to be provided and
furnished by the board and shall be accompanied by the fee hereinafter required by this section, which amount shall be paid as a fee for each annual renewal of such permit.

Separate application shall be made and separate permits issued for each separate place at which is carried on any of the operations for which a permit is required by this act.

For the issuing of permits required by this act, the fee for each permit issued to a pharmacy, drugstore, or apothecary shop shall be fifty dollars ($50.00) and for other stores, shops and places of business, the fee for each permit issued shall be four dollars ($4.00) for stores stocking less than ten (10) drug items; ten dollars ($10.00) for stores stocking more than ten (10) but not more than fifty (50) drug items and twenty-five dollars ($25.00) for stores stocking over fifty (50) drug items and the same fee shall be paid for the annual renewal of each permit. Drug items shall include all articles defined by the term “drug” in section 37-2202, Idaho Code.

Permits issued under the provisions of this act shall be conspicuously posted in the place for which such permit was granted. Such permits shall not be transferable, and shall expire on the thirtieth day of June each year.

All licenses and permits must be renewed within sixty (60) days after the expiration of the same. A failure to make application for renewal within the time specified will work forfeiture of the right to renewal. However, the board may renew any permit or reinstate any license cancelled, for failure to renew the same, on payment of ten dollars ($10.00), together with all fees delinquent at the time of cancellation and the renewal fee for each year thereafter up to the time of reinstatement.

Approved February 27, 1971.

CHAPTER 41
(1L B. No. 116)

AN ACT
AMENDING SECTION 54-1716, IDAHO CODE, RELATING TO THE FEE PAID BY OUT-OF-STATE PHARMACISTS BY ESTABLISHING A NEW AND HIGHER LICENSING FEE.

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

SECTION 1. That Section 54-1716, Idaho Code, be, and the same is
hereby amended to read as follows:

54-1716. PHARMACISTS LICENSED IN OTHER STATES — LICENSING WITHOUT EXAMINATION — EXCEPTIONS — FEES AND EXPENSES. — The board of pharmacy may in its discretion license as a pharmacist without examination, any person who is duly so licensed by examination in some other state, provided that the said person shall produce satisfactory evidence of having had the required secondary and professional education and is possessed of good character and morals demanded of applicants for licensure as pharmacists under the laws of this state, excepting that persons of good moral character who have become licensed as pharmacists by examination in other states prior to the passage of this act shall be required to meet only the requirements which existed in this state at the time when they became licensed in such other states, and provided also that the state in which such person is licensed shall, under like conditions, grant licensure as a pharmacist without examination to pharmacists duly licensed by examination in this state.

Applicants for such licensure in this state shall pay an examination fee of $75.00 seventy-five dollars ($75.00) to cover the expense of examination and of making an investigation of their character, general reputation and pharmaceutical standing in the state where they are licensed.

Approved February 27, 1971.

CHAPTER 42
(H. B. No. 74)

AN ACT
AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY ADDING THERETO A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 39-130, IDAHO CODE, DEFINING EMERGENCY MEDICAL SERVICES AND AUTHORIZING THE STATE BOARD OF HEALTH TO ESTABLISH A PROGRAM OF ASSISTANCE, EDUCATION, AND PLANNING FOR THE PURPOSE OF IMPROVING STATEWIDE EMERGENCY MEDICAL SERVICES.

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

SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and
designated as Section 39-130, Idaho Code, and to read as follows:

39-130. EMERGENCY MEDICAL SERVICES — DEFINITION — RESPONSIBILITIES. — (a) For purposes of this section "emergency medical services" shall mean and include the initial first aid care and handling of sick and injured persons prior to and during their transportation to a hospital emergency department or any other place equipped to provide emergency care and treatment for sick and injured persons.

(b) The state board of health shall have the power and authority to conduct an emergency medical service program. The state board of health in conducting such program shall provide assistance and advice to public agencies, private organizations, counties, municipal corporation, quasi municipal corporations and other local units of government that are providing or will be providing emergency medical services. Such assistance and advice shall be for the purpose of:

1. Expanding emergency medical services to all parts of the state,
2. Improving existing emergency medical services,
3. Improving first aid training and care,
4. Establishing and improving an emergency medical services communication system,
5. Encouraging the use of adequately equipped emergency medical service vehicles or air transport,
6. Encouraging adequate training for emergency medical attendants and drivers.

(c) The state board of health is hereby authorized to assist the emergency medical service organizations referred to in subsection (b) of this section in obtaining funds or financing from any source that may be made available to such organizations for their use in improving emergency medical services in Idaho.

(d) The state board of health is hereby authorized to establish a central office within the department of health to plan and coordinate emergency medical services in Idaho.

Approved February 27, 1971.
CHAPTER 43  
(S. B. No. 1094)  

AN ACT  
AMENDING SECTION 33-3301, IDAHO CODE, TO STRIKE SOUTHERN IDAHO COLLEGE OF EDUCATION AND INSERT DEPARTMENT OF EDUCATION AT IDAHO STATE UNIVERSITY, AND CHANGE LEWIS-CLARK NORMAL SCHOOL TO LEWIS-CLARK STATE COLLEGE; AMENDING SECTION 33-3302, IDAHO CODE, TO CHANGE LEWIS-CLARK NORMAL SCHOOL TO LEWIS-CLARK STATE COLLEGE; AMENDING SECTION 33-3303, IDAHO CODE, TO STRIKE SOUTHERN IDAHO COLLEGE OF EDUCATION; AND PROVIDING AN EFFECTIVE DATE.  

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

SECTION 1. That Section 33-3301, Idaho Code, be, and the same is hereby amended to read as follows:  

33-3301. NORMAL SCHOOL FUND. - A fund which shall be known as the normal school fund is hereby created and established. All moneys now in, or credited to, that certain fund designated on the books in the offices of the state auditor and the state treasurer as the normal school fund and all moneys which may accrue from the investment of the proceeds of the sale of any of the lands granted to the state of Idaho by the United States government under the provisions of the Act of Congress of July 3, 1890, entitled "An act to provide for the admission of the state of Idaho into the Union," for state normal schools or of any of the timber growing thereon and also any and all moneys which may be received on account of any rentals charged for the use of any of such lands and all moneys which may be received by the state treasurer on account of interest upon deferred payments on such of said lands as may have been sold by the state, shall be credited to, placed in and constitute the said normal school fund.  

No moneys shall ever be appropriated out of the said normal school fund for any purpose whatsoever other than the support and the maintenance of the Southern Idaho College of Education department of education at Idaho State University, and Lewis-Clark State College Normal School, and not more than one-half (½) of all the moneys accruing to the said fund shall ever be appropriated for the support and maintenance of either of such institutions, except that the interest on that part of the fund belonging to the Southern Idaho College of Education shall be used for the
Depariment of Education at Idaho State University.

SECTION 2. That Section 33-3302, Idaho Code, be, and the same is hereby amended to read as follows:

33-3302. APPROPRIATION FOR LEWIS-CLARK STATE COLLEGE NORMAL SCHOOL. — One-half (½) of all moneys that now are in or which may hereafter accrue to the said normal school fund are perpetually appropriated and set apart for the support and maintenance of the Lewis-Clark State College Normal School, the same to be available for such purpose immediately upon their being credited to the said fund.

SECTION 3. That Section 33-3303, Idaho Code, be, and the same is hereby amended to read as follows:

33-3303. APPROPRIATION FOR THE DEPARTMENT OF EDUCATION AT IDAHO STATE UNIVERSITY. — One-half (½) of all the moneys that now are in or which may hereafter accrue to the said normal school fund are hereby appropriated and set apart for the support and maintenance of the Southern Idaho College of Education, except that the interest thereon shall be used for the department of education at Idaho State University, the same to be available for such purpose immediately upon their being credited to the said fund.

SECTION 4. This act shall be in full force and effect on and after July 1, 1971.

Approved March 2, 1971.

CHAPTER 44
(S. B. No. 1095)

AN ACT
AMENDING SECTION 33-3101, IDAHO CODE, TO CHANGE NAME TO LEWIS-CLARK STATE COLLEGE AND PROVIDING FOR COURSES AND PROGRAMS; AMENDING SECTION 33-3102, IDAHO CODE, BY DECLARING THE COLLEGE TO BE A BODY POLITIC AND CORPORATE, WITH ITS OWN SEAL AND HAVING POWER TO SUE AND BE SUED IN ITS OWN NAME; AMENDING SECTION 33-3103, IDAHO CODE, BY STRIKING THE PROVISION FOR AN OFFICIAL SEAL, THAT THE BOARD OF TRUSTEES MAY SUE AND BE SUED, AND THAT THE SECRETARY MUST KEEP
AN ITEMIZED ACCOUNT OF ALL EXPENDITURES; AMENDING SECTION 33-3104, IDAHO CODE, TO PRESCRIBE GENERAL POWERS AND DUTIES OF THE BOARD; AMENDING SECTION 33-3106, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF SUCH EMPLOYEES AS ARE NECESSARY FOR THE OPERATION OF THE COLLEGE; AMENDING SECTION 33-3107, IDAHO CODE, TO PROVIDE THAT THE BOARD SHALL PRESCRIBE COURSES AND PROGRAMS OF STUDY WITH THE ADVICE OF THE PRESIDENT OF THE COLLEGE AND TO GRANT ACADEMIC DEGREES; AMENDING SECTION 33-3113, IDAHO CODE, TO PROHIBIT RELIGIOUS OR SECTARIAN TEST FOR ADMISSION TO LEWIS-CLARK STATE COLLEGE; AMENDING SECTION 33-3114, IDAHO CODE, TO PROVIDE FOR TRANSFER AND CONTROL OF FUNDS, PROPERTY AND OBLIGATIONS AT LEWIS-CLARK NORMAL SCHOOL TO LEWIS-CLARK STATE COLLEGE SUBJECT TO CONTROL OF THE BOARD OF TRUSTEES; AMENDING SECTION 33-3116, IDAHO CODE, BY PROVIDING THAT ALL REFERENCES TO PREVIOUS NAMES OF LEWIS-CLARK NORMAL SCHOOL ARE AMENDED TO READ LEWIS-CLARK STATE COLLEGE; REPEALING SECTIONS 33-3105, 33-3108, 33-3109, 33-3110, 33-3111, 33-3112, 33-3115, 33-3117, AND 33-3118, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 33-3101, Idaho Code, be, and the same is hereby amended to read as follows:

33-3101. ESTABLISHMENT OF SCHOOL. — A normal school An institute of higher education for the state of Idaho is hereby established in the city of Lewiston, in the county of Nez Perce, to be called the Lewis-Clark State College Normal School, heretofore called the Northern Idaho College of Education Lewis-Clark Normal School, the purposes of which shall be the offering training and educating teachers in the art of instruction and governing in the public schools of this state and teaching the various branches that pertain to a good public school education, and the giving of instruction in four (4) year college courses in science, arts and literature, and such courses or programs as are usually included in liberal arts colleges leading to the granting of the degree of Bachelor, upon completion of such courses or programs as have been approved by the state board of education.
The board of trustees may also establish educational, vocational, technical and other courses or programs of less than four (4) years, as it may deem necessary, and such courses or programs may be given or conducted on or off campus, or in night school, summer schools, or by extension courses.

SECTION 2. That Section 33-3102, Idaho Code, be, and the same is hereby amended to read as follows:

33-3102. BOARD OF TRUSTEES. — The Lewis-Clark State College is hereby declared to be a body politic and corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Lewis-Clark State College Normal School, is vested in the state board of education, which shall act as the board of trustees of the Lewis-Clark State College Normal School.

SECTION 3. That Section 33-3103, Idaho Code, be, and the same is hereby amended to read as follows:

33-3103. MEETINGS, OFFICERS, AND PROCEEDINGS OF BOARD. — The said board of trustees may conduct its proceeding in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of the said board of trustees shall be entered of record. Said board of trustees shall have an official seal, which shall be judicially noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their number a president chairman, a vice-chairman and a secretary. The state treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said the board, and an itemized account of all expenditures authorized by said board.

SECTION 4. That Section 33-3104, Idaho Code, be, and the same is hereby amended to read as follows:

33-3104. GENERAL POWERS AND DUTIES OF BOARD. — The said board of trustees are hereby authorized, and it is made their duty, to take and at all times have general supervision and control of all buildings and property appertaining to said normal school; and to have general charge and control of the construction of all buildings to be built. They shall have
power to let contracts for building and completion of any such buildings, and the entire supervision of their construction.

All rights and title to property, real or personal, belonging to or vested in the Lewis-Clark State College are hereby vested in its board of trustees and their successors. The board of trustees is empowered to acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the Lewis-Clark State College; and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the college.

The board of trustees of the Lewis-Clark State College shall have the following powers:

1. To adopt rules and regulations for its own government and for that of the college.

2. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the grantor.

3. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program, to accept grants or gifts from any source for the conduct of such program; and to conduct such program on or off campus.

4. To employ architects or engineers in planning the construction, remodeling or repair of any building or property, and whenever no other agency is designated by law to do so, to let contracts for such construction, remodeling or repair and to supervise the work thereof.

5. To have at all times, general supervision and control of all property, real or personal, appertaining to the college, and to insure the same.

SECTION 5. That Section 33-3106, Idaho Code, be, and the same is hereby amended to read as follows:

33-3106. PRESIDENT AND OTHER TEACHERS, OFFICERS, AND EMPLOYEES — SALARIES AND DUTIES — REMOVAL. — The board of trustees shall have power to elect employ a president of the college and, with his advice, to appoint such assistants, deans, instructors, specialists and other and all other teachers, officers and employees as are required for the operation of the college; that may be deemed necessary, to fix salaries of the same and to prescribe their duties, and they shall have power to remove the president or and all other teachers, officers, and other employees, in accordance with the policies and rules of the state board of education, and appoint others in their stead.
SECTION 6. That Section 33-3107, Idaho Code, be, and the same is hereby amended to read as follows:

33-3107. COURSE OF STUDY, CERTIFICATES, AND DIPLOMAS. — It shall be the duty of the board of trustees, with the advice of the president, to prescribe the courses and programs of study and, the requirements for admission, the time and standard of for graduation, and to issue such certificates and diplomas as may from time to time be deemed suitable. These certificates and diplomas shall entitle the holder to teach in the public schools of any county in this state for the time and in the grade specified in the certificate or diploma and to grant academic degrees to those students entitled thereto.

SECTION 7. That Section 33-3113, Idaho Code, be, and the same is hereby amended to read as follows:

33-3113. SUPERVISION OF STUDENTS; SECTARIAN TESTS PROHIBITED. — The board of trustees, in their regulation, and the president and assistants in their supervision and government of said school, shall exercise a watchful guardianship over the morals of the students at all times during their attendance upon the same, but no religious or sectarian test shall be applied in the selection of teachers, and none shall be adopted in said school. No religious or sectarian test shall be applied in the admission of students, nor in the selection of instructors or other personnel of the college.

SECTION 8. That Section 33-3114, Idaho Code, be, and the same is hereby amended to read as follows:

33-3114. TRANSFER AND CONTROL OF FUNDS. — All funds, appropriations, and moneys from whatever source, now or hereafter obtained, appropriated, and/or provided by law for the administration of the Lewiston State Normal School, and/or its board of trustees, and/or the Northern Idaho College of Education, created by sections 33-3101, 33-3102, 33-3105, 33-3106, 33-3109, 33-3115, 33-3118, and its board of trustees, including the funds for the operation of the dining hall for the Lewiston State Normal School as provided by the provisions of sections 33-3704 — 33-3711, and all of the funds contained in the normal school fund of the state of Idaho as provided by sections 33-3701 and 33-3702, and all of the funds in the permanent educational or endowment funds of the state of Idaho which belong to said Lewiston State Normal School, or are appropriated to the use thereof, and also all moneys in the dormitory fund of said Lewiston State Normal School under the provisions of sections
33-3701 and 33-3702, shall be and the same are hereby respectively transferred and made available to and placed under the control of the Lewis-Clark Normal School, and its board of trustees, and appropriated for expenditure by it or them and shall be paid out of by the state treasurer in the manner provided by the Constitution and laws of the state of Idaho.

All of the funds and money in the dormitory fund and dining fund, including any revolving fund, of the Lewis-Clark Normal School, as the same is authorized by sections 33-3701 — 33-3711, Idaho Code, and all of the unexpended funds hereto allocated and appropriated to the Lewis-Clark Normal School for the purposes specified therein, and all of the educational or other endowment funds, holdings, rights, privileges and immunities of the Lewiston Normal School, the Northern Idaho College of Education, and the Lewis-Clark Normal School, and any allocations or appropriations from the normal school fund, as provided by section 33-3302, Idaho Code, are hereby transferred to, vested in and continued in the Lewis-Clark State College and placed under the control of its board of trustees, and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and laws of the state of Idaho. All of the property, real and personal, and all of the obligations, legal and moral, of the Lewiston Normal School, the Northern Idaho College of Education, and of the Lewis-Clark Normal School, are hereby vested in, or shall become the obligations of, the Lewis-Clark State College.

SECTION 9. That Section 33-3116, Idaho Code, be, and the same is hereby amended to read as follows:

33-3116. CONSTRUCTION OF REFERENCES TO LEWISTON STATE NORMAL SCHOOL. — All references to the "Lewiston State Normal School" in any of the existing laws and statutes of the state of Idaho not specifically amended herein, are hereby amended to read the "Lewis-Clark Normal School," as fully and completely as though the said name in said statute or statutes or existing laws was specifically amended herein, and such references shall be considered and construed as referring to said Lewis-Clark Normal School.

Wherever the name Lewiston Normal School, or Northern Idaho College of Education, or Lewis-Clark Normal School, shall appear in any statute, such statute is hereby amended to read Lewis-Clark State College as fully and completely as though the said name on said statute was specifically amended therein, and all such statutes shall be construed to refer to and mean Lewis-Clark State College.

SECTION 11. This act shall be in full force and effect on and after July 1, 1971.

Approved March 2, 1971.

CHAPTER 45
(H. B. No. 195)

AN ACT
AMENDING SECTION 40-2706, IDAHO CODE, RELATING TO DUTIES OF HIGHWAY COMMISSIONERS FOR NEW OR CONSOLIDATED HIGHWAY DISTRICTS ARISING OUT OF ANY ELECTIONS UNDER CHAPTER 27, TITLE 40, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 40-2706, Idaho Code, be, and the same is hereby amended to read as follows:

40-2706. ORGANIZATION OF COUNTY-WIDE HIGHWAY DISTRICTS — HIGHWAY DISTRICT COMMISSIONERS — APPOINTMENT — TERMS — ELECTION. — County-wide highway districts may be organized under the laws applicable to highway districts and for county highway districts, new highway districts, consolidated or enlarged highway districts, and the number of commissioners to be elected shall be three (3). The formation of the county-wide highway district, new highway district, consolidated or enlarged highway district, shall be effected by the board of county commissioners of the county so affected within sixty (60) days of such reorganization election creating a county-wide highway district, new highway districts, consolidation, enlargement or other modification of highway districts, and, upon the determination that said county road system shall be organized reorganized as a county-wide highway district, new highway districts, consolidation, enlargement or other modification, the original board of county-wide said highway districts commissioners shall, within seventy (70) days of said election, be appointed by the governor of the state of Idaho. The county said highway districts shall be divided by the
county commissioners into three (3) subdistricts as nearly equal in mileage, assessed valuation, and population as is practicable under the circumstances, for the purpose of determining each commissioner’s district, and each commissioner for said county-wide highway districts shall represent and be elected or appointed from the district in which he resides.

Upon their appointment, qualification and entering into the performance of their duties as highway commissioners for the county, the commissioners originally appointed shall, by lot, determine two (2) of the original appointed commissioners who shall serve for terms of original appointment for two (2) years, or until the next regular election for highway commissioners. The remaining one (1) commissioner shall serve for a period of four (4) years, or until the next succeeding election for highway commissioners. Thereafter, the commissioners elected shall be elected for four (4) year terms as their terms shall expire, thus providing a continuation in office of highway district commissioners, and providing for the staggered election of the commissioners in subsequent elections.

The laws applicable to the election of highway commissioners shall apply to the conducting of highway district elections throughout the county, said election for commissioners to be on a nonpartisan basis.

Where a county-wide highway district, new highway district, or consolidated or enlarged district results from the election under the local option law, it shall be the duty of the governor, in the appointment of the original board of highway commissioners for the county, where there shall have been in existence at the time of the creation of the county-wide highway district, any good roads districts or highway districts within the limits of said county to appoint, whenever practicable, one (1) of the existing commissioners as they shall qualify by reason of residence in the territorial limits of the districts of the county-wide highway district as a commissioner of the county-wide highway system.

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 March 2, 1971.
CHAPTER 46  
(S. B. 1029)  
AN ACT  
RELATING TO CONTRACTORS, PROVIDING THAT NO AGREEMENT IN CONNECTION WITH A CONTRACT TO WORK IS ENFORCEABLE WHICH HAS THE EFFECT OF INDEMNIFYING A PROMISEE FOR THE SOLE NEGLIGENCE OF THE PROMISEE, HIS AGENTS, EMPLOYEES, OR INDEMNITEES, AND PROVIDING THAT THIS ACT SHALL NOT AFFECT SUCH AGREEMENTS IN EXISTENCE WHEN THIS ACT BECOMES EFFECTIVE.  

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

SECTION 1. A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, highway, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee, his agents or employees, or indemnitees, is against public policy and is void and unenforceable.  

This act will not be construed to affect or impair the obligations of contracts or agreements, which are in existence at the time the act becomes effective.  

Approved March 2, 1971.  

CHAPTER 47  
(S. B. No. 1053)  
AN ACT  
AMENDING SECTION 9-411, IDAHO CODE, BY ADDING THERETO A PROVISION FOR SECONDARY EVIDENCE OF THE CONTENTS OF HOSPITAL MEDICAL CHARTS OR RECORDS; AND AMENDING CHAPTER 4, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION, TO BE KNOWN AS SECTION 9-420, IDAHO CODE, PROVIDING FOR PROOF OF THE
CONTENTS OF HOSPITAL MEDICAL CHARTS OR RECORDS BY USE OF A CERTIFIED COPY THEREOF AND PROVIDING A PROCEDURE WHEREBY A SUBPOENA DUces TECUM CALLING FOR THE PRODUCTION OF SUCH CHARTS OR RECORDS MAY BE SATISFIED BY USE OF A CERTIFIED COPY AND WITHOUT ATTENDANCE BY THE CUSTODIAN OF THE ORIGINAL THEREOF.

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

SECTION 1. That Section 9-411, Idaho Code, be, and the same is hereby amended to read as follows:

9-411. SECONDARY EVIDENCE OF WRITINGS - WHEN ADMISSIBLE. — There can be no evidence of the contents of a writing other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

3. When the original is a record or other document in the custody of a public officer.

4. When the original has been recorded, and a certified copy of the record is made evidence by this code or other statutes.

5. When the original consists of numerous accounts or other documents which can not be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

6. When the original consists of medical charts or records of hospitals licensed in this state, and the provisions of section 9-420, Idaho Code, have been followed.

In the cases mentioned in subdivisions three and four 3, 4 and 6, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions one 1 and two 2, either a copy or oral evidence of the contents.

SECTION 2. That Chapter 4, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 9-420, Idaho Code, and to read as follows:

9-420. PROOF OF HOSPITAL MEDICAL CHARTS OR RECORDS BY CERTIFIED COPY AND COMPLIANCE WITH SUBPOENA DUces TECUM FOR PRODUCTION THEREOF. — 1. Medical charts or records of hospitals licensed in this state may be proved as to foundation, identity and authenticity by use of a legible and durable copy, certified upon verification
by an employee of the hospital charged with the responsibility of being custodian of the originals thereof and empowered by said hospital to make such verified certifications. Said copy may be used in any proceeding in lieu of the original which, however, the hospital shall hold available during the pendency of the cause or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record. A hospital wishing to avail itself of this section shall at any time prior to the time for proof of said charts and records, place on file with the clerk of the court or with the other body or agency conducting the proceeding a certified copy of a resolution of the governing board of such hospital, authorizing and identifying such employee.

2. When a subpoena duces tecum is served upon any employee of such a hospital, and requires the production of any such medical charts or records at trial, deposition or any other proceeding, it is sufficient compliance therewith if a hospital employee charged with the responsibility of being custodian of the originals thereof promptly notifies the party causing service of the subpoena, or his attorney of record, together with all other parties to the proceeding in which the subpoena was issued and of which parties he has reasonable notice, or their attorneys of record, of the hospital’s election to proceed under the provisions hereof and of the estimated actual and reasonable expenses of reproducing such charts or records. Following such notification, the hospital employee charged with custodial responsibility for the original charts or records specified in the subpoena shall hold the same available at the hospital, and upon payment to the hospital of said estimated reproduction expenses shall promptly deliver, by mail or otherwise, a true, legible and durable copy of all medical charts or records specified in such subpoena, certified upon his verification, to the clerk of the court before which said proceeding is pending, or to the officer, body or tribunal before which said proceeding is pending if it be not before a court of this state. Such copies shall be delivered after being separately enclosed and sealed in an inner envelope or wrapper, with the title and number of the action, cause or proceeding, the name of such hospital, the name of the hospital employee making such certification and verification and the date of the subpoena clearly inscribed thereon, and the sealed envelope or wrapper shall then be enclosed and sealed in an outer envelope or wrapper, and delivered as aforesaid.

If the hospital has none of the charts or records specified in the subpoena, or only part thereof, an employee having custodial responsibility
for original hospital charts or records shall so state in an affidavit and following notice and payment of expenses as hereinabove provided shall hold available such original charts or records as are in the hospital's custody and specified in the subpoena and shall deliver copies thereof certified upon his verification together with said affidavit, in the manner hereinabove provided.

3. The personal attendance of the hospital employee having custodial responsibility for the original charts or records specified in the subpoena is required if the subpoena contains a clause providing substantially as follows: "The personal attendance of a hospital employee having custodial responsibility for the original charts or records specified herein is required by this subpoena. The procedure outlined in section 9-420, Idaho Code, shall not be sufficient compliance herewith." If the subpoena duces tecum requires the attendance of a hospital employee in the above manner, said requirement shall be deemed satisfied by the personal attendance of any hospital employee whose name has been lodged with the court or other body as provided in subsection 1 of this section. If personal attendance of a witness is required in the manner herein provided, the hospital may nevertheless elect to substitute true, legible and durable copies of the charts or records specified in the subpoena duces tecum by the giving of a notice of such election in the manner hereinabove set forth, in which case payment to the hospital of the actual and reasonable expenses of duplication of such charts or records by any party to the proceeding in which the subpoena was issued, or such party's attorney of record, shall be a condition precedent to the personal attendance of any person pursuant to said subpoena, unless otherwise ordered by the court or other body before which said proceeding is pending.

4. Any patient whose medical records or charts are thus copied and delivered, any person acting on his behalf, the hospital having custody of such records, or any physician, nurse or other person responsible for entries on such charts or records shall have standing to apply to the court or other body before which the cause or proceeding is pending for a protective order denying, restricting or otherwise limiting access and use of such copies or original charts and records. Such patients, persons, hospitals, physicians or nurses who are not parties to the cause or proceeding and who wish to apply for a protective order may petition to intervene in the cause or proceeding and simultaneously apply for such a protective order.

Approved March 2, 1971.
CHAPTER 48
(S. B. No. 1070 as amended)

AN ACT
AMENDING SECTION 58-332, IDAHO CODE, BY STRIKING THE PROVISION FOR SALE OF SURPLUS PROPERTY FOR CASH AND INSERTING IN LIEU THEREOF THE PROVISION FOR SALE OF SURPLUS PROPERTY FOR SALE UPON TERMS AND CONDITIONS TO BE DETERMINED BY THE STATE BOARD OF LAND COMMISSIONERS AND SPECIFIED IN THE NOTICE OF SALE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 58-332, Idaho Code, be, and the same is hereby amended to read as follows:

58-332. DISPOSAL OF SURPLUS REAL PROPERTY. - Upon transfer to it of such surplus real property the state board of land commissioners shall ascertain if such property is suitable for other state use, and if it determines that suitable use can be had, then control and custody thereof shall be relinquished by said board to the agency by whom it shall determine the best use can be made. If no such use be determined, then the state board of land commissioners shall either by public sale, after notice by publication for six (6) consecutive weeks in a newspaper published in the county in which the property is situate, and in a newspaper published at Boise, sell the same to the highest and best bidder upon terms and conditions to be determined by the board and specified in the notice of sale; or if the property is suitable for use by any tax-supported agency or unit of the state of Idaho or the United States other than the state of Idaho or its agencies, may, by negotiated sale or exchange sale, transfer or exchange such property with such tax-supported agency or unit; provided, however, that such negotiated sales, transfers, or exchanges shall be for adequate and valuable consideration.

In the event of any contemplated sale, transfer or exchange the state board of land commissioners shall cause to be published a notice of such contemplated sale, transfer or exchange, setting out in full the description of the property concerned, both as to what is being offered and what is to be received, and the proposed use of the property by the tax-supported unit which proposes to acquire such property. Such notice shall be published in a newspaper published in the county in which the property is situate and in a
newspaper published at Boise, for six (6) consecutive weeks prior to a certain fixed date therein, designating a time and place for public hearing in the matter. The state board of land commissioners shall determine within ten days subsequent to such hearing as to acceptance or rejection of such proposed sale, transfer or exchange, and if accepted, the tax-supported unit shall thereafter have sixty (60) days in which to accept or reject the proffer, following such decision. If such negotiations fail, then the property may be subject to public sale as hereinabove set forth.

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 approval.

Approved March 2, 1971.

CHAPTER 49
(S. B. No. 1022)

AN ACT
AMENDING SECTION 59-1302, IDAHO CODE, RELATING TO DEFINITIONS USED IN THE PUBLIC EMPLOYEE RETIREMENT ACT, BY STRIKING IN SUBSECTION (2) THE REQUIREMENT THAT AN ACTIVE MEMBER MUST BE AN EMPLOYEE WHO HAS COMPLETED AT LEAST TWELVE MONTHS OF SERVICE, PERMITTING MEMBERSHIP FOR AN EMPLOYEE RECEIVING BENEFITS FROM ANOTHER SYSTEM WITH LIMITATIONS AND DEFINING PRIOR SERVICE TO INCLUDE CERTAIN MEMBERS HERETOFORE NOT ALLOWED SUCH SERVICE; AMENDING SECTION 59-1303, IDAHO CODE, BY STRIKING THE PROVISION THAT CONTRIBUTIONS SHALL BEGIN AFTER ONE YEAR OF SERVICE AND PROVIDING THAT CERTAIN OFFICIALS MAY CONTRIBUTE TOWARD THE COST OF BENEFITS WHILE REMAINING IN OFFICE AFTER BEING ELIGIBLE FOR SERVICE RETIREMENT; AMENDING SECTION 59-1306, IDAHO CODE, BY STRIKING TIME LIMITATIONS FOR ISSUANCE OF A MODIFIED PRIOR SERVICE CERTIFICATE; AMENDING SECTION 59-1307, IDAHO CODE, BY PROVIDING THAT A MEMBER MAY REINSTATE MEMBERSHIP WITHIN TEN YEARS BY REPAYMENT
OF ACCUMULATED CONTRIBUTIONS TO THE RETIREMENT FUND WITHIN TWO YEARS AFTER AGAIN BECOMING AN EMPLOYEE; AMENDING SECTION 59-1310, IDAHO CODE, BY REDUCING THE PERIOD OF ELIGIBILITY FOR VESTED RETIREMENT FROM TEN YEARS TO FIVE YEARS; AMENDING SECTION 59-1314, IDAHO CODE, TO PROVIDE THAT CERTAIN INACTIVE MEMBERS WITH LESS THAN FIVE YEARS OF MEMBERSHIP SHALL RECEIVE A SEPARATION BENEFIT AUTOMATICALLY TEN YEARS AFTER BECOMING AN INACTIVE MEMBER; AMENDING SECTION 59-1316, IDAHO CODE, BY PROVIDING THAT AN EMPLOYER MAY SUBMIT A REQUEST FOR POSTPONEMENT OF RETIREMENT OF AN EMPLOYEE; AMENDING SECTION 59-1319, IDAHO CODE, TO PROVIDE FOR COMPUTATION OF PRIOR SERVICE RETIREMENT ALLOWANCE BASED UPON PERCENTAGES OF A MEMBER'S ANNUAL SALARY ON THE DATE OF ESTABLISHMENT, IF ANY, OTHERWISE THE SALARY IN EFFECT FOR THE FIRST TWELVE MONTHS AFTER EMPLOYMENT FOR AN EMPLOYER AND FURTHER PROVIDING THAT THE COMPUTATION OF A DISABLED SERVICE RETIREMENT ALLOWANCE SHALL IN PART BE BASED ON THE AMOUNT OF FINAL CONTRIBUTION OR THE AVERAGE OF CONTRIBUTIONS MADE DURING THE PRECEDING TWELVE MONTHS AT THE DISCRETION OF THE BOARD; AMENDING SECTION 59-1321, IDAHO CODE, BY PROVIDING THAT ON OR AFTER JULY 1, 1971, THE ANNUAL AMOUNT OF EARLY RETIREMENT ALLOWANCE PAYABLE TO ANY MEMBER NOT CLASSIFIED AS A POLICE OFFICER OR FIREMAN SHALL EQUAL THE ACCRUED PORTION OF THE SERVICE RETIREMENT ALLOWANCE PROVIDED SUCH MEMBER AS THIRTY YEARS OR MORE OF CREDITED SERVICE AND IS WITHIN FIVE YEARS OF BEING ELIGIBLE FOR SERVICE RETIREMENT AND FURTHER PROVIDING THAT ON OR AFTER JULY 1, 1971, THE ANNUAL AMOUNT OF EARLY RETIREMENT ALLOWANCE PAYABLE TO ANY MEMBER CLASSIFIED AS POLICE OFFICER OR FIREMAN SHALL EQUAL THE ACCRUED PORTION OF THE SERVICE RETIREMENT ALLOWANCE PROVIDED SUCH MEMBER HAS TWENTY-FIVE YEARS OR MORE
OF CREDITED SERVICE AND IS WITHIN FIVE YEARS OF BEING ELIGIBLE FOR SERVICE RETIREMENT AND PROVIDED FURTHER THAT EXCEPT AS OTHERWISE PROVIDED THE ANNUAL AMOUNT OF EARLY RETIREMENT ALLOWANCE PAYABLE TO ANY MEMBER SHALL EQUAL THE ACTUARIAL EQUIVALENT OF THE ACCRUED PORTION OF THE EARLY RETIREMENT ALLOWANCE; AMENDING SECTION 59-1324, IDAHO CODE, TO INCLUDE AN INACTIVE MEMBER ELIGIBLE TO RECEIVE A RETIREMENT ALLOWANCE AND ELIMINATING THE REQUIREMENT FOR AN ACTIVE MEMBER OR A MEMBER RECEIVING A DISABILITY RETIREMENT ALLOWANCE TO BE WITHIN TEN YEARS OF BEING ELIGIBLE FOR SERVICE RETIREMENT AT TIME OF DEATH IN ORDER FOR A SURVIVING SPOUSE TO ELECT RECEIVING A MONTHLY ALLOWANCE IN LIEU OF ANY DEATH BENEFIT OTHERWISE PAYABLE; AMENDING SECTION 59-1327, IDAHO CODE, BY CHANGING THE PROFESSIONAL DESIGNATION FOR QUALIFICATION OF THE ACTUARY TO BE RETAINED BY THE BOARD; AMENDING SECTION 59-1329, IDAHO CODE, BY STRIKING THE WORD “SECRETARY” AND INSERTING IN LIEU THEREOF THE WORD “DIRECTOR” AND STRIKING THE WORD “THIRD” AND INSERTING IN LIEU THEREOF THE WORD “FOURTH”; AMENDING SECTION 59-1332, IDAHO CODE, BY PROVIDING FOR COLLECTION OF DELINQUENCIES IF ANY EMPLOYER FAILS TO REMIT CONTRIBUTIONS WITHIN THIRTY DAYS AFTER THE DATE DUE; REPEALING SECTION 59-1335, IDAHO CODE; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY ADDING A NEW SECTION 59-1335, IDAHO CODE, PROVIDING THAT REVISION OF BENEFITS SHALL BE PROSPECTIVE ONLY UNLESS OTHERWISE SPECIFICALLY PROVIDED BY STATUTE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. — (1) As used in this act, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) “Active member” means any employee who has completed at least
twelve (12) months of service and who is neither receiving is not establishing the right to receive benefits under any other retirement system operated wholly or in part by an agency of the state or political subdivision, nor establishing the right to receive benefits from any such retirement system, but an employee shall be an active member if otherwise eligible:

(a) in any case where the public employee retirement system has in existence an agreement with another retirement system pursuant to which such an employee is allowed membership rights;
(b) although a contingent annuitant under the optional retirement allowances as provided in this act or by any similar provision of any other retirement act;
(c) where an employee's remuneration is paid by two (2) or more governmental units, provided that with respect of some portion of such remuneration the employee is not establishing the right to receive benefits from any other retirement system operated wholly or in part by an agency of the state or a political subdivision. The salaries from all such sources shall be combined and treated as though the salaries were paid from one (1) source in accordance with the rules of the board;
(d) in any case where an employee is receiving benefits under another retirement system operated wholly or in part by an agency of the state or political subdivision, provided, however, that in no event shall such employee receive any benefit provided under this act for service performed for which benefits are otherwise payable.

(3) “Accumulated contributions” means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) “Actuarial equivalent” means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) “Actuarial tables” means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(6) “Beneficiary” means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit. Should no beneficiary be designated, his beneficiary shall be his surviving spouse, if any, otherwise his next of kin pursuant to the provisions of section 14-103, Idaho Code.

(7) “Calendar year” means twelve (12) calendar months commencing on the first day of January.
(8) "Credited service" means the aggregate of membership service and prior service.

(9) "Date of establishment" means July 1, 1965 or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" shall have the meaning given in this subsection. A member shall be considered to be disabled if the board shall find, on the basis of medical evidence:

(a) that he is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country, or from an intentionally self-inflicted injury; and

(b) that he will remain so disabled permanently and continuously during the remainder of his life.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works in excess of twenty (20) hours per week for an employer and who receives salary for services rendered for such employer, or

(b) Elected officials or appointed officials of an employer, or

(c) Civilian employees of the Idaho National Guard employed through direct appointment or designation by the governor or the adjutant
general and whose salaries are paid by the United States, provided that the United States furnishes the employer contributions required to be paid by sections 59-1330 and 59-1332, Idaho Code. The date of establishment for said employees shall be set by the board but shall not be earlier than July 1, 1965 nor later than the date of commencement of contributions by the United States.

(B) "Employee" does not include:
(a) Persons rendering service to an employer in the capacity of an independent business, trade or profession; or
(b) Seasonal, emergency or casual workers whose periods of employment with any employer do not total five (5) months in any calendar year; or
(c) Persons provided sheltered employment or mailework by a public employer in an employment or industries program maintained for the benefit of such persons; or
(d) Inmates of a state institution or persons enrolled full time in a state institution principally for purposes of training, whether or not receiving compensation for services performed for the institution; or
(e) Persons making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that those persons who receive separate remuneration for work currently performed for an employer and the United States Government may elect to be members of the retirement system in accordance with rules of the board.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system.

(16) "Fireman" means an employee whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this act.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, selected by the board to hold and invest the employers' and members' contributions and pay certain benefits granted under this act.
(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means service with respect to which contributions are payable under sections 59-1303—59-1305, Idaho Code.

(23) "Military service" shall mean service in the armed forces of the United States prior to or after July 1, 1965. For the purposes of this act, military service shall not include any period ended by dishonorable discharge or during which option of termination of such service is granted but not accepted, nor shall it include any period which commences more than ninety (90) days after the person ceases to be an employee or ends more than ninety (90) days before the person again becomes an employee.

(24) "Police officer" means an employee engaged in hazardous law enforcement duties as determined by the board, or employees of the adjutant general and military department of the state.

(25) "Prior service" means any period prior to July 1, 1965 of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for his service prior to July 1, 1965 on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this act upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1326—59-1329, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.
(31) "Salary" means the total salary or wages payable by all employers to an active member for personal services currently performed, together with all remuneration for personal services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with the rules prescribed by the board.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means personal service rendered to an employer for a salary. Service of fifteen (15) days or more during any calendar month shall be credited as one (1) month of service. Service of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested retirement allowance" means the periodic payment becoming payable upon an inactive member's becoming eligible for vested retirement.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 2. That Section 59-1303, Idaho Code, be, and the same is hereby amended to read as follows:

59-1303. CONTRIBUTIONS. — (1) Beginning with the first full payroll period beginning on or after the later of the date of establishment and the completion of one (1) year of service; or employment, each active member who is not eligible for service retirement shall contribute toward the cost of the benefits provided under this act. This contribution shall be made in the form of a deduction from salary to be transmitted to the board in accordance with section 59-1332, Idaho Code.

(2) An active member who at the time of his service retirement eligibility holds an office to which he has been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official may contribute toward the cost of benefits provided under this act so long as he remains in office. Such contributions shall be made as provided by section 59-1303 (1), Idaho Code.
SECTION 3. That Section 59-1306, Idaho Code, be, and the same is hereby amended to read as follows:

59-1306. PRIOR SERVICE CERTIFICATES. — Within sixty (60) days after becoming a member, each member shall furnish the board with such information as the board shall deem necessary for the proper operation of the system. Within six (6) months after receipt of such information, the board shall issue a prior service certificate to each member having prior service. Such certificate shall specify the amount of such service, and shall be final and conclusive for the purposes of this act as to such service, provided, however, that any member may, within 3 years from the date of original issuance of such certificate or modification thereof, or, if no such certificate is issued, within 4 years of becoming a member, request the board to issue a modified prior service certificate. In the event of error regarding the amount of such service specified, the board may issue a modified prior service certificate.

SECTION 4. That Section 59-1307, Idaho Code, be, and the same is hereby amended to read as follows:

59-1307. CESSATION OF MEMBERSHIP — REINSTATEMENT. — A person shall cease to be a member when his accumulated contributions become payable to him. If no more than five (5) ten (10) years separates his periods of employee status, or if his accumulated contributions become payable during military service, he may reinstate his previous credited service by repaying to the retirement fund the full amount of his accumulated contributions within six (6) months two (2) years after again becoming an employee.

SECTION 5. That Section 59-1310, Idaho Code, be, and the same is hereby amended to read as follows:

59-1310. CONDITIONS OF ELIGIBILITY FOR RETIREMENT. —

(1) An active member who is not a police officer or a fireman is eligible for service retirement if he has attained age sixty-five (65) with at least five (5) years of credited service including six (6) months of membership service. An active member who is a police officer or fireman is eligible for service retirement if he has attained age sixty (60) with at least five (5) years of credited service including six (6) months of membership service.

(2) An active member who is not eligible for service retirement is eligible for disability retirement if he becomes disabled after at least ten (10) years of credited service including six (6) months of membership service.

(3) An active member who is not eligible for either service retirement
or disability retirement is eligible for early retirement if he has at least five (5) years of credited service including six (6) months of membership service and is within ten (10) years of being eligible for service retirement. Additionally an active member is eligible for early retirement on termination of disability retirement as provided by section 59-1313, Idaho Code.

(4) An inactive member who has at least five (5) years of membership service is eligible for vested retirement if he has at least ten (10) years of service and is within ten (10) years of the date he would have been eligible for service retirement had he remained an active member, except that an inactive member, who at the time of his separation from service held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official or was the head or director of a department, division, agency, statutory section or bureau of the state, or was employed on or after July 1, 1965 by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code, is eligible for vested retirement regardless of length and type of service, unless covered by a merit system for employees of the state of Idaho.

(5) An inactive member who is not eligible for any form of retirement is eligible for the separation benefit.

(6) The beneficiary of any member other than a retired member who elected option 1 or 2 under section 59-1317, is eligible for the death benefit, if any, upon the member's death.

(7) By written notice on a form prescribed by the board, eligibility for early or vested retirement may be deferred by a member until the date he would have been eligible for service retirement had he remained an active member.

SECTION 6. That Section 59-1314, Idaho Code, be, and the same is hereby amended to read as follows:

59-1314. SEPARATION BENEFITS. — The separation benefit, if any, shall become payable upon the written request of an inactive member or, if the inactive member has less than ten (10) five (5) years of membership service and has not previously so requested and is not a person who at the time of his separation from service held an office to which he had been elected by popular vote or having a term fixed by the Constitution, statute or charter or was appointed to such office by an elected official or was the head or director of a department, division, agency or statutory section or
bureau of the state, shall be payable automatically five (5) ten (10) years after the person becomes an inactive member.

SECTION 7. That Section 59-1316, Idaho Code, be, and the same is hereby amended to read as follows:

59-1316. COMPULSORY RETIREMENT — POSTPONEMENT — REEMPLOYMENT OF SERVICE RETIRED MEMBERS. — (1) Any member who becomes eligible for service retirement shall thereupon be retired except as provided in this section. If the employer of any member shall submit a written approval request for postponement of retirement, with a certification that such postponement is in the public interest, the board may allow such postponement on an annual basis in accordance with its rules, but in no event beyond the July 1st following the date the eligible member attains age seventy (70).

(2) A service retired member may again become employed by an employer only if his employer certifies that an emergency exists, that such reemployment is in the public interest, and is limited to periods of casual employment, all in accordance with rules of the board. No contributions shall be made by the member or his employer during such reemployment and any benefit under this act payable on behalf of such member shall continue.

(3) Nothing in this section shall be construed to prevent the election or appointment of any person, regardless of age or credited service, to any office having a term fixed by statute or charter or where the appointee serves at the pleasure of the governor or governing body of an employer.

SECTION 8. That Section 59-1319, Idaho Code, be, and the same is hereby amended to read as follows:

59-1319. COMPUTATION OF SERVICE RETIREMENT ALLOWANCES. — (1) The annual amount of service retirement allowance payable to any member shall equal the sum of his prior service retirement allowance, his disabled service retirement allowance, his military service retirement allowance and his membership service retirement allowance, all as calculated in accordance with this section.

(2) The annual amount of prior service retirement allowance for any year of prior service for each member not classified as a police officer or fireman shall be equal to the sum of one percent (1%) of that part of the member's annual salary on the date of establishment, if any, otherwise the salary in effect for the first twelve (12) months after employment by an employer, which is not in excess of four thousand eight hundred dollars
($4,800) and two percent (2%) of the balance of his annual such salary, provided, however, that no prior service allowance shall exceed the sum of five hundred dollars ($500.00) per month.

(3) The annual amount of prior service retirement allowance for any year of prior service for any member classified as a police officer or fireman shall be equal to the sum of one and two-tenths percent (1.2%) of that part of the member's annual salary on the date of establishment, if any, otherwise the salary in effect for the first twelve (12) months after employment by an employer, which is not in excess of four thousand eight hundred dollars ($4,800) and two and four-tenths percent (2.4%) of the balance of his annual such salary, provided, however, that no prior service allowance shall exceed the sum of five hundred dollars ($500.00) per month.

(4) The annual amount of disabled service retirement allowance shall be computed after each period during which any member shall have been in receipt of a disability retirement allowance, and shall be equal to one-third (1/3) of the product of (a) and (b) as follows:

(a) the total number of months from the first day of the month next succeeding the final contribution of such member under sections 59-1303–59-1305, Idaho Code, before such period to the date of termination of such disability retirement allowance; and

(b) the amount of such final contribution, such amount, if computed on the basis of less than a full month's salary, to be adjusted to the corresponding full month's figure, or, at the discretion of the board, the average of contributions made during the preceding twelve (12) months.

(5) The annual amount of military service retirement allowance shall be computed after each period during which any active member shall have been in military service, provided that during such period the member did not withdraw his accumulated contributions, and shall be equal to one-third (1/3) of the product of (a) and (b) as follows:

(a) the total number of months from the first day of the month next succeeding the final contribution of such member under sections 59-1303, 59-1305, Idaho Code, before such period to the date of termination of such military service; and

(b) the amount of such final contribution, such amount, if computed on the basis of less than a full month's salary, to be adjusted to the corresponding full month's figure.

(6) The annual amount of membership service retirement allowance for
each member shall be equal to one-third \((1/3)\) of the aggregate, without interest, of the member's contributions made in accordance with sections 59-1303, 59-1304, *Idaho Code*.

SECTION 9. That Section 59-1321, *Idaho Code*, be, and the same is hereby amended to read as follows:

59-1321. COMPUTATION OF EARLY RETIREMENT ALLOWANCES. — (1) On or after July 1, 1969, the annual amount of early retirement allowance payable to any member with thirty-five (35) years or more of credited service who is or was within five (5) years of being eligible for service retirement shall equal the accrued portion of the service retirement allowance. On or after July 1, 1971, the annual amount of early retirement allowance payable to any member not classified as police officer or fireman who thereafter retires shall equal the accrued portion of the service retirement allowance provided such member has thirty (30) years or more of credited service and is within five (5) years of being eligible for service retirement.

(2) The annual amount of early retirement allowance payable to any member with less than thirty-five (35) years of service shall equal the actuarial equivalent of the accrued portion of the service retirement allowance. On or after July 1, 1971, the annual amount of early retirement allowance payable to any member classified as police officer or fireman who thereafter retires shall equal the accrued portion of the service retirement allowance provided such member has twenty-five (25) years or more of credited service and is within five (5) years of being eligible for service retirement.

(3) Except as otherwise herein provided the annual amount of early retirement allowance payable to any member shall equal the actuarial equivalent of the accrued portion of the early retirement allowance.

SECTION 10. That Section 59-1324, *Idaho Code*, be, and the same is hereby amended to read as follows:

59-1324. COMPUTATION OF DEATH BENEFITS. — (1) The death benefit of an active or inactive member shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all retirement allowance payments ever made to the deceased member. The death benefit of a retired member shall equal the excess, if any, of the member's accumulated contributions at the time the member retired over the aggregate of all retirement allowance payments ever made to the deceased member.
(2) If an active member on or after July 1, 1969, or an inactive member eligible to receive a retirement allowance or a member receiving a disability retirement allowance who is within ten (10) years of being eligible for service retirement and has at least ten (10) years of credited service shall die with a surviving spouse, the beneficiary may elect, in lieu of any death benefit otherwise payable, a monthly allowance to be paid to the surviving spouse as provided in option 1 under section 59-1317, Idaho Code. Such allowance shall be calculated as though such deceased member had retired immediately before his death and shall equal the actuarial equivalent of the accrued portion of the service retirement allowance.

SECTION 11. That Section 59-1327, Idaho Code, be, and the same is hereby amended to read as follows:

59-1327. POWERS AND DUTIES OF BOARD. - (1) The board shall have the power and duty, subject to the limitations of this act, of managing the system. It shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name as such board. The venue of all actions in which the board is a party shall be Ada County, Idaho.

(2) The board shall appoint an executive director to serve at its discretion. The executive director shall be bonded as is required by the board and shall perform such duties as assigned by the board.

(3) The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the persons for the staff who shall hold their respective positions subject to the rules of a merit system for state employees. The salaries and compensation of all persons employed for purposes of administering the system shall be fixed by the board and as otherwise provided by law.

(4) The board shall arrange for actuarial, legal and medical advisors for the system. It shall cause a competent actuary who is a fellow or associate of the Society of Actuaries, a member of the academy of actuaries and who is familiar with public systems of pensions to be retained on a consulting basis. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. During the first year of operation of the system and at least once every three (3) years thereafter, the actuary shall make a general investigation of the suitability of the actuarial tables used by the system. The board shall adopt the actuarial tables in use by the system and may change the same in its sole discretion at any time. The actuary shall make an annual valuation of the liabilities and reserves of the system, and an
annual determination of the amount of contributions required from the employers under this act, and certify the results thereof to the board. The actuary shall also perform such other duties as may be assigned by the board.

(5) The board shall establish the system's office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel. The board shall provide for the installation of a complete and adequate system of accounts and records for administering this act. All books and records shall be kept in the system's offices.

SECTION 12. That Section 59-1329, Idaho Code, be, and the same is hereby amended to read as follows:

59-1329. RULES AND REGULATIONS — PROCEDURES FOR HEARINGS PRIOR TO APPEALS — APPEALS. — (1) Subject to other provisions of this act and pursuant to the policy and standards set out in section 59-1301, Idaho Code, the board shall have the power and authority to adopt, amend or rescind such rules and regulations as may be necessary for the proper administration of this act. Such rules and regulations as promulgated by the board shall be filed with the secretary of state and shall become effective ten (10) days after such filing.

(2) Any person aggrieved by any otherwise final decision or inaction of the board must, before he appeals to the courts, file with the executive secretary director of the board by mail or personally a notice for a hearing before the board. The notice of hearing shall set forth the grounds of appeal to the board.

(3) A hearing shall be held before the board in Ada County, Idaho, at a time and place designated by the board. Such hearing shall be de novo and summary and no witness's testimony shall be received unless he shall first have been sworn under oath. The retirement board shall cause all oral testimony to be recorded and thereafter transcribed and when transcribed, if an appeal is taken or if ordered by the board, the same with all depositions shall be filed in and remain a part of the record of the hearing. Members of the board shall have power to administer oaths, to preserve and enforce order during such hearings, to issue subpoenas for and to compel the attendance and testimony of witnesses or the production of books, papers, documents and other evidence and to examine witnesses.

(4) At the time and place fixed for hearing, unless continued for cause, each party shall present his evidence with respect to the issues raised in the notice of hearing.

(5) The record of the hearing shall be considered by the board and the
decision and order of the majority of the members shall be the decision and order of the board. Every such final decision and order rendered by the board shall be in writing and a copy thereof shall be mailed to each party to the appeal and to his attorney of record.

(6) If any person in proceedings before the board disobeys or resists any lawful order or process or misbehaves during a hearing, or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, document or other evidence, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the board shall certify the facts to the district court having jurisdiction, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if doing of the forbidden act had occurred with reference to the proceedings, or in the presence of the court.

(7) Within thirty (30) days after any final decision and order by the board has been mailed to the parties any such party aggrieved thereby may appeal to the District Court of the Fourth Judicial District of the state of Idaho, in and for the County of Ada, and such appeal shall be heard as a case in equity, but any party shall be entitled to a trial de novo upon such appeal. Such appeal shall be perfected by serving a notice of appeal and claim for relief on the executive director of the board and each adverse party, or his attorney, by personal service or by mail and by filing the notice of appeal and claim for relief, together with proof of service thereof, with the clerk of the court. The board and any other party to the appeal shall, within thirty (30) days after receipt of such notice of appeal and claim for relief, serve and file a notice of appearance and answer upon the appellant or his attorney of record and such appeal shall thereupon be deemed at issue. The executive director shall serve upon all parties to the appeal or their attorneys and file with the clerk of the court, a certified copy of the complete record of the hearing before the board. The decision or judgment of the district court shall be subject to appeal to the Supreme Court in the same manner and by the same procedure as appeals are taken and perfected to the court in civil actions at law.

SECTION 13. That Section 59-1332, Idaho Code, be, and the same is hereby amended to read as follows:
59-1332. EMPLOYER REMITTANCE TO BOARD — COLLECTION OF DELINQUENCIES. — (1) Between the first and twentieth day of each month, each employer, or, where the employer's payroll is paid separately by departments, each department of each employer, shall remit to the retirement board all contributions required of it and its employees on the basis of salaries paid by it during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

(2) If any employer shall fail or refuse to remit any such contributions, the board, within thirty (30) days after the date due, may certify to the state treasurer the fact of such failure or refusal and the amount of the delinquent contribution or contributions, together with its request that such amount be set over from funds of the delinquent employer to the credit of the retirement fund. A copy of such certification and request shall be furnished the delinquent employer.

(3) Within ten (10) days after receipt of such request, the state treasurer shall draw his warrant for payment of such amount out of moneys in the state treasury allocated to the use of such employer during the current biennium. If such moneys are not so available, the state treasurer shall take any legal steps necessary to collect such amount.

SECTION 14. That Section 59-1335, Idaho Code, be, and the same is hereby repealed.

SECTION 15. That Chapter 13, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-1335, Idaho Code, and to read as follows:

59-1335. AMOUNT, TERMS AND CONDITIONS OF REVISED BENEFITS TO BE PROSPECTIVE ONLY UNLESS OTHERWISE PROVIDED. — As the amount, terms and conditions of benefits may be revised from time to time the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by statute.

SECTION 16. This act shall be in full force and effect on and after July 1, 1971.

AN ACT
AMENDING SECTION 33-104, IDAHO CODE, RELATING TO THE STATE BOARD OF EDUCATION BY INCREASING THE PER DIEM AMOUNT PAID TO EACH MEMBER OF THE BOARD FROM FIFTEEN DOLLARS TO TWENTY-FIVE DOLLARS.

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

SECTION 1. That Section 33-104, Idaho Code, be, and the same is hereby amended to read as follows:

33-104. MEETINGS OF THE BOARD — HONORARIUM — EXPENSES — ORGANIZATION. — The state board shall hold four (4) regular meetings annually at such time and place as may be directed by the board. Special meetings may be called by the president at any time and place designated in such call.

Each member shall be paid a fixed sum of fifteen dollars ($15.00) twenty-five dollars ($25) per day spent upon the business of the board, or upon business of the board of regents, or as trustees of the several state institutions, and the actual and necessary expenses connected therewith. Payment made under the authority of this section shall be exempt from the provisions of the Standard Travel Pay and Allowances Act of 1949.

At its first meeting after the first day of April, in each year, the state board shall organize and shall elect from its membership a president, a vice-president and a secretary.

Approved March 4, 1971.

CHAPTER 51
(S. B. No. 1061)

AN ACT
AMENDING SECTION 49-2608, IDAHO CODE, RELATING TO SNOWMOBILES, BY CHANGING THE AMOUNT OF MONEYS TO BE RETAINED BY THE COUNTY FROM FIFTY PER CENT TO EIGHTY PER CENT AND THE AMOUNT CREDITED TO THE
"SEARCH AND RESCUE FUND" FROM FORTY PER CENT TO TEN PER CENT AND ALLOWING THE COUNTIES TO USE SAID FUNDS FOR ESTABLISHING AND MAINTAINING PARKING AND UNLOADING AREAS ON PUBLIC AND PRIVATE LANDS.

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

SECTION 1. That Section 49-2608, Idaho Code, be, and the same is hereby amended to read as follows:

49-2608. DISTRIBUTION OF MONEYS COLLECTED - COUNTY SNOWMOBILE FUND - SEARCH AND RESCUE FUND - MOTOR VEHICLE FUND. The county treasurer shall, not later than the fifteenth day of each month, distribute all moneys collected under this act as follows:

(1) Fifty per cent (50%) Eighty per cent (80%) shall be retained by the county for credit to the "county snowmobile fund" which is hereby established in each county treasury. Moneys in such fund shall be used by the board of county commissioners of such county only for the development of snowmobile activities, including the establishment and maintenance of parking and unloading areas on public and private property.

(2) Forty per cent (40%) Ten per cent (10%) shall be remitted to the state treasurer for credit to the "search and rescue fund" which is hereby established as a continuing fund in the state treasury. Moneys in the search and rescue fund are hereby perpetually appropriated to and shall be used by the department for the purpose of defraying costs of search and rescue missions conducted by state and/or local authorities; Provided provided, that in no event shall more than one thousand dollars ($1,000) be expended from such fund for any single search and rescue mission.

(3) Ten per cent (10%) shall be remitted to the state treasurer for credit to the motor vehicle fund.

Approved March 4, 1971.

CHAPTER 52
(S.B. No. 1048, as amended in the House)

AN ACT
RELATING TO SETTLEMENT BY COUNTY AUDITOR WITH MUNICIPALITIES, AMENDING SECTION 63-2104, IDAHO CODE, BY STRIKING THE REQUIREMENT THAT MONEYS BE
TRANSMITTED NO LATER THAN THE TWENTY-FIFTH DAY OF JULY, OCTOBER AND JANUARY, RESPECTIVELY.

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

SECTION 1. That Section 63-2104, Idaho Code, be, and the same is hereby amended to read as follows:

63-2104. SETTLEMENT BY COUNTY AUDITOR WITH MUNICIPALITIES. — The county auditor must, on the second Monday of each month, transmit to the clerk of every incorporated city, every school district, and every other taxing district having a treasurer whose duty it is to receive, keep and disburse all moneys belonging to it, an order on the county treasurer, prepared upon blanks in the form supplied by the state tax commission, in favor of the treasurer of such incorporated city, school district or other taxing district for the amount of all moneys paid into the county treasury and apportioned to such incorporated city, school district or other taxing district on or after the second Monday of the preceding month; provided, however, that in the months of July and January the money may be transmitted no later than the 25th of the month. In no case shall the money be transmitted later than the 25th day of July, October and January, respectively. At the same time, the treasurer shall also make out and transmit to the clerk of the incorporated city, school district or other taxing district a statement in duplicate in segregated form, each levy or each source from which received, showing from what sources the money was received and the amount received from each source, which statement must be made upon blanks in the form to be supplied by the state tax commission and duly sworn to before an officer authorized to administer oaths. Upon receipt of the order and statements the clerk shall countersign the order and deliver the same, together with the duplicate statement, to the treasurer and file the original statement in his office. The order, when countersigned by the clerk, shall be payable to the treasurer upon presentation to the county treasurer, and the county treasurer shall return the order as his voucher for any payment in his regular monthly settlement with the county auditor, as provided by law.

Approved March 4, 1971.
AN ACT
AMENDING SECTION 50-1405, IDAHO CODE, BY PROVIDING THAT PERSONAL AS WELL AS REAL PROPERTY MAY BE EXCHANGED OR TRANSFERRED BY A CITY COUNCIL, AND PROVIDING THAT SUCH PROPERTY MAY BE TRANSFERRED TO AN ORGANIZED HOSPITAL DISTRICT IN THE STATE OF IDAHO; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 50-1405, Idaho Code, be, and the same is hereby amended to read as follows:

50-1405. TRANSFER BY EXCHANGE OR GIFT. — Real and personal property may be exchanged hereunder for other property if the consideration received by said city shall be deemed adequate by the council, provided, however, that aside from the provisions of section 50-1403, Idaho Code, any city of the state of Idaho may by a vote of one half (½) plus one (1) of the members of the full council, by ordinance duly enacted, authorize the transfer or conveyance of any real or personal property owned by such city to the government of the United States, any county, the state of Idaho, the University of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any school or library district, or to any junior college district organized under the provisions of chapter 21 of title 33, Idaho Code, in which said city is located, and authorize the transfer or conveyance of its cemetery and endowment, or any funds or indebtedness pertaining thereto, to a cemetery maintenance district organized under the laws of this state for public use, with or without any consideration accruing to said city, when in the judgment of said councilmen it is for the best interest of such city that said transfer or conveyance be made.

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 March 4, 1971.
CHAPTER 54
(H.B. No. 155)

AN ACT
AMENDING SECTION 63-2205, IDAHO CODE, BY STRIKING THE WORD "BLANKS" AND ADDING THE WORD "FORMS", PROVIDING THAT THE FORMS BE "PRESCRIBED" BY THE STATE TAX COMMISSION RATHER THAN "SUPPLIED" BY THE STATE AUDITOR.

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

SECTION 1. That Section 63-1909, Idaho Code, be, and the same is hereby amended to read as follows:

63-1909. ABSTRACT OF PERSONAL PROPERTY ROLL. — The county auditor must add up the columns of amounts and values of each kind of property and of all property and the amount of taxes, rebates and exemptions and prepare an abstract of all the property entered upon the personal property assessment roll, including property exempt under section 63-105D, Idaho Code, showing the total number of items or pieces of property and the total value thereof, the total number and value of livestock and the amount and value of other property, shown in separate columns in the assessment roll, and the total value of all property exempt under said section 63-105D, Idaho Code, as determined by the board of county commissioners.

The abstract of taxes provided for in this section must be prepared by the county auditor in duplicate and duly verified upon blanks forms supplied by the state auditor and tax commission and must show all of the property, upon the assessment roll, and all matters and things required to be shown upon such abstract must be entered in proper spaces and columns provided for that purpose in said blank.

SECTION 2. That Section 63-2205, Idaho Code, be, and the same is hereby amended to read as follows:
63-2205. PRESCRIBED FORMS MUST BE USED. — All books, records and blanks forms required by this act to be used by the officers of the several counties in this state shall be in the form supplied prescribed by the state auditor tax commission in compliance with the provisions of this act.

Approved March 4, 1971.

CHAPTER 55
(H. B. No. 134)

AN ACT
AMENDING THE IDAHO SALES TAX ACT BY AMENDING SECTION 63-3615, IDAHO CODE, TO REDEFINE "USE" TO EXCLUDE THE USE OF PROPERTY IN THE PERFORMANCE OF A CONTRACT, WHERE THE TITLE HOLDER OF SUCH PROPERTY WOULD BE ENTITLED TO AN EXEMPTION UNDER THE PROVISIONS OF SUBSECTION (d) OF SECTION 63-3622, IDAHO CODE.

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

SECTION 1. That Section 63-3615, Idaho Code, be, and the same is hereby amended to read as follows:

63-3615. STORAGE — USE. — (a) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the title holder under section 63-3622(d), Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business or the use of that property primarily or directly used or consumed in connection with the following items when exclusively financed by the United States in
connection with the Idaho national reactor testing station:

(1) research, development, experimental and testing activities and/or
(2) the reprocessing of special nuclear material and the use of such
properties shall be an exempt use.

(c) "Storage" and "use" do not include the keeping, retaining, or
exercising of any right or power over tangible personal property for the
purpose of subsequently transporting it outside the state for use thereafter
solely outside the state, or for the purpose of being processed, fabricated, or
manufactured into, attached to, or incorporated into other tangible personal
property to be transported outside the state, and thereafter used solely
outside the state.

Approved March 4, 1971.

CHAPTER 56
(H. B. No. 157)

AN ACT
AMENDING SECTION 63-804, IDAHO CODE, RELATING TO
ASSESSMENT OF CAR COMPANIES BY CHANGING THE WORD
"TRUE" TO "MARKET VALUE FOR ASSESSMENT PURPOSES"
AS THE VALUE TO BE ASCERTAINED AND FIXED BY THE TAX
COMMISSION ON CARS, STRIKING THE WORDS "TOWNS AND
VILLAGES", CHANGING "TRUE CASH" VALUE TO "ASSESSED"
VALUE AS THE STANDARD FOR APPORTIONING VALUE TO
COUNTIES OR TAX REVENUE TO BE COLLECTED BY TAX
COMMISSION ON CAR COMPANIES AT ONE HUNDRED
THOUSAND DOLLARS, STRIKING THE WORD "TAXABLE" AND
ADDING THE WORD "ASSESSED" TO PROVIDE CLARITY,
PROVIDING THAT TAX REVENUE ON CAR COMPANIES OF LESS
THAN ONE HUNDRED THOUSAND DOLLARS ASSESSED VALUE
TO BE BASED ON THE AVERAGE TAX RATE FOR THE
CURRENT YEAR ON ALL OTHER CAR COMPANIES ASSESSED,
PROVIDING THAT IF NO CAR COMPANY IS ASSESSED FOR ONE
HUNDRED THOUSAND DOLLARS IN THE CURRENT YEAR THE
AVERAGE TAX RATE SHALL BE THE AVERAGE TAX RATE ON
ALL TAXABLE PROPERTY OF THE PRIOR YEAR, STRIKING
SUPERFLUOUS WORDAGE RELATING TO VARIOUS TYPES OF CARS, STRIKING SECTION "33-1011" AND SUBSTITUTING "33-1009, IDAHO CODE" FOR APPORTIONMENT OF PUBLIC SCHOOL FUNDS TO THE SEVERAL COUNTIES.

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

SECTION 1. That Section 63-804, Idaho Code, be, and the same is hereby amended to read as follows:

63-804. MANNER OF ASSESSMENT. — It shall be the duty of the state tax commission to ascertain from said statements the number of cars required to make the total mileage of the cars of each such car company, mercantile or other company or corporation, firm or individual within the period of one year, and such number of cars so found shall be the number of cars on which said company, firm or individual shall be assessed for said year. The state tax commission shall ascertain and fix the valuation upon each particular class of cars, which, as nearly as possible, shall be the true market value for assessment purposes of such cars, and the number so ascertained shall be assessed to the respective car company, mercantile or other company, firm or individual. For the purpose of making the assessment, the commission is authorized to base the assessment upon the returns of the several railroad companies; and in determining the number of such cars, the state tax commission, in so far as may be practicable, shall harmonize the statements of the several railroad companies, car companies, mercantile or other companies, firms or individuals with respect thereto.

Such assessment shall be included in the records and proceedings of the commission, and shall be prorated among the several counties traversed by railways carrying said cars in proportion to the entire main track mileage of railway carrying said cars in said county, and a statement transmitted to the county auditor of each county as provided in cases of other assessments made by said board, and shall be apportioned by the county auditor among the respective districts, school districts, road districts, cities, towns and villages in which the same may be entered on the tax list and collected by the county tax collector, as otherwise provided by law;

(a) Provided, however, in any case where assessment of the personal property of any car company, mercantile or other company or corporation, firm or individual, made and equalized by the state tax commission, shall be in a true, each an assessed value of less than one hundred thousand dollars ($100,000.00), the commission then shall determine the tax to be charged on the property covered by each such assessment by applying to the taxable
assessed value thereof the average tax rate in the state for the current year, on car companies having an assessed value of more than one hundred thousand dollars ($100,000.00). In the event no car companies are assessed for one hundred thousand dollars ($100,000.00) in the current year then the average tax rate shall be the average tax rate on all taxable property for the prior year. Applying to the taxable values of the personal property of all other stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, or any other kind of cars except sleeping cars, as compiled and determined by the state tax commission for such year. The state tax commission hereby is empowered to charge, levy and collect the tax so determined on the personal property of any such company having a taxable situs in this state. Each tax so charged and levied shall constitute a lien as of January 1 of the year of assessment on all the personal property of the company within this state and shall be payable in the same manner and at the same due dates provided by law in respect to taxes on personal property payable in the several counties. In collecting such taxes the state tax commission hereby is authorized to pursue any or all of the rights, remedies or processes provided by law for the collection of delinquent taxes on personal property. All moneys collected by the commission as provided under this subsection (a) shall be paid forthwith to the state treasurer for transfer to the public school income fund in the state treasury and apportioned as provided by section 33-1001–33-1009, Idaho Code, to the several counties.

Approved March 4, 1971.

CHAPTER 57
(H. B. No. 156)

AN ACT
AMENDING SECTION 63-802, IDAHO CODE, BY STRIKING THE WORDS “THE SECOND MONDAY IN MAY OF EACH YEAR” FOR FILING STATEMENT AND AUTHORIZING TAX COMMISSION TO DETERMINE THE FILING DATE, REQUIRING A STATEMENT TO INCLUDE ADDITIONAL INFORMATION AS THE TAX COMMISSION MAY DEEM PERTINENT, AND REQUIRING THE TAX COMMISSION TO DECLARE THE FILING DATE IN RULES
AND REGULATIONS; AMENDING SECTION 63-803, IDAHO CODE, BY STRIKING "THE SECOND MONDAY IN MAY OF EACH YEAR" AS DATE FOR FILING OPERATING STATEMENT AND AUTHORIZING THE TAX COMMISSION TO DETERMINE THE FILING DATE BY RULES AND REGULATIONS; AMENDING SECTION 63-808, IDAHO CODE, BY STRIKING "SECOND MONDAY OF AUGUST, 1911" AS THE FILING DATE OF OPERATING STATEMENTS AND AUTHORIZING TAX COMMISSION TO DETERMINE SUCH DATE, CHANGING THE PERIOD COVERED BY SUCH REPORTS, TO PROVIDE FOR FILING OF REPORT WITH TAX COMMISSION RATHER THAN ITS EXECUTIVE OFFICER, STRIKING THE WORDS "FAIR AVERAGE" AND ADDING THE WORDS "MARKET VALUE FOR ASSESSMENT PURPOSES" TO INDICATE THE VALUE TO BE REPORTED FOR EACH CAR OF EACH CLASS OF CARS, REQUIRING TAX COMMISSION TO DECLARE IN ITS REGULATIONS DATE FOR FILING REPORT.

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

SECTION 1. That Section 63-802, Idaho Code, be, and the same is hereby amended to read as follows:

63-802. CAR COMPANIES DEFINED STATEMENT. - The president or other chief officer of every car company, mercantile or other company or corporation, other than a railroad company operating a line of railroad, and every firm, corporation or individual owning or operating any stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, or any other kind of cars except sleeping cars through, in or into the state of Idaho, shall, on or before the second Monday in May of each year such time as may be determined by the tax commission, make to the state tax commission a true, full and accurate statement, verified by the affidavit of the officer or person making the report, showing the aggregate number of miles made by their cars on the several lines of railroad in this state ending on the thirty-first day of December last past, and a further statement showing the average number of miles traveled per day of a particular class covered by the statement in the ordinary course of business during the year, and the total number of cars owned by said company, individual or firm., and any additional information which the tax commission may deem pertinent. The tax commission shall declare the date for filing statement in its rules and regulations.
SECTION 2. That Section 63-803, Idaho Code, be, and the same is hereby amended to read as follows:

63-803. STATEMENT BY RAILROAD COMPANIES. — The president or other officer of every railroad company whose lines run through, in or into this state shall, on or before the second Monday of May in each year such time as may be determined by the tax commission, furnish to the state tax commission a statement, verified by the affidavit of the officer or person making the same, showing the total number of miles made by the cars of every such car company, mercantile or other company, firm or individual on their lines, branches, sidings, spurs and warehouse tracks in this state during the year ending on the thirty-first day of December last past. The tax commission shall declare the date for filing of statement in its rules and regulations.

SECTION 3. That Section 63-808, Idaho Code, be, and the same is hereby amended to read as follows:

63-808. SLEEPING CAR COMPANIES — STATEMENT. — Every sleeping car company whose cars are used by railroads running in, into or through this state, shall, on or before the second Monday of August, 1911, and annually thereafter, make to the date as may be determined by the tax commission, file with the executive officer of the state tax commission a report for the year ending August first preceding December thirty-first of the preceding year, sworn to by some officer of such sleeping car company acquainted with the facts, showing: first, the total number of cars of each class used in transacting the business upon all of the lines running in, into or through this state; second, the fair average market value for assessment purposes per car of each of the classes of such cars; third, the total number of miles of railroad main track over which such cars were used within this state, and within each county in this state; fourth, the total value of such cars due to this state as the number of miles of railroad main track over which such cars were used within this state bears to the total number of miles of railroad main track over which such cars are used, and the value per mile. The tax commission shall declare in its rules and regulations the date for filing such report.

Approved March 4, 1971.
AN ACT
AMENDING SECTION 70-1714, IDAHO CODE, RELATING TO
DISBURSEMENT OF THE FUNDS OF PORT DISTRICTS, TO
PROVIDE THAT SUCH DISBURSEMENT SHALL BE BY CHECK OR
DRAFT SIGNED BY ANY TWO OF THE FOLLOWING NAMED
ENTITIES, TO-WIT: THE PORT DISTRICT MANAGER OR ANY
DULY ELECTED, QUALIFIED AND ACTING MEMBER OF THE
PORT COMMISSION; AND FURTHER TO PROVIDE THAT THE
SIGNATURE OF ANY ONE OF THE PORT COMMISSIONERS
SIGNING ANY SUCH CHECK OR DRAFT MAY BE BY FACSIMILE;
AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 70-1714, Idaho Code, be, and the same is
hereby amended to read as follows:

50-1714. PORT FUNDS — DISBURSEMENT. — Except for the
incidental expense fund provided for in this act, funds of the district shall be
disbursed only upon order of or voucher approved by the port commission.
Such approval may be by approval of a settlement sheet, listing any number
of such vouchers and showing the date thereof, the person making claim for
disbursement, the purpose of the disbursement in general terms and the
amount of the disbursement. Such disbursement shall be by check or draft
signed by the port manager and countersigned by any one (1) of the port
commissioners by any two (2) of the following named entities, to-wit: the
port district manager or any duly elected, qualified and acting member of
the port commission. The counter-signature of any one (1) of the port
commissioners signing any such check or draft may be by facsimile.

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 March 4, 1971.
AN ACT
AMENDING SECTION 23-943, IDAHO CODE, RELATING TO THE
PROHIBITION OF PERSONS UNDER CERTAIN AGES FROM
ENTERING, REMAINING OR LOITERING IN ANY PLACE WHERE
ALCOHOLIC BEVERAGES ARE SOLD BY PROVIDING THAT
PERSONS EIGHTEEN YEARS OF AGE OR OLDER WHO ARE
PROFESSIONAL MUSICIANS OR SINGERS MAY ENTER OR
REMAIN DURING THE COURSE OF THEIR EMPLOYMENT AS
MUSICIANS AND SINGERS.

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

SECTION 1. That Section 23-943, Idaho Code, be, and the same is
hereby amended to read as follows:

23-943. PERSONS UNDER SPECIFIED AGES FORBIDDEN TO
ENTER, REMAIN IN OR LOITER AT CERTAIN LICENSED PLACES. —
No person under the age of twenty-one (21) years shall enter, remain in
or loiter in or about any place, as herein defined, licensed for the sale of
liquor by the drink at retail, nor shall any person under the age of twenty
(20) years enter, remain in or loiter in or about any place, as herein defined,
licensed for the sale of beer for consumption on the premises; nor shall any
licensee of either such place, or any person in charge thereof, or on duty
while employed by the licensee therein, permit or allow any person under
the age specified with respect thereto to remain in or loiter in or about such
place.

Provided, however, it is lawful for persons who are musicians and
singers eighteen (18) years of age or older, to enter and to remain in any
place as defined in section 23-942, Idaho Code, but only during and in the
course of their employment as musicians and singers. Provided further, that
the foregoing shall not permit the sale or distribution of any alcoholic
beverages to any person under the ages specified for sale of alcoholic
beverages.

Approved March 4, 1971.
CHAPTER 60
(H. B. No. 205)

AN ACT
AMENDING CHAPTER 32, TITLE 42, IDAHO CODE, BY ADDING A NEW SECTION TO BE DESIGNATED AS SECTION 42-3219B, IDAHO CODE, RELATING TO THE EXCLUSION AND REMOVAL OF LANDS FROM A WATER AND SEWER DISTRICT FOLLOWING REJECTION TWICE BY THE ELECTORATE OF SUCH DISTRICT OF PROPOSALS FOR CREATION OF INDEBTEDNESS FOR IMPROVEMENTS, SAID EXCLUSION AND REMOVAL OF SUCH AREA TO BE ALLOWED UPON PETITION BY THE BOARD OF DIRECTORS OF THE DISTRICT TO THE DISTRICT COURT AND UPON THE COURT'S FINDING THAT SAID AREA PETITIONED FOR EXCLUSION AND REMOVAL FORMS A CONTIGUOUS AREA WHICH EITHER HAS NO NEED FOR WATER OR SEWAGE DISPOSAL SERVICES OR REASONABLY CONSTITUTES A SEPARATE AREA FOR PURPOSES OF WATER AND SEWAGE DISPOSAL SERVICES; OR IS OF SUCH LOCATION AND CHARACTER THAT WATER OR SEWAGE DISPOSAL SERVICES CANNOT BE FURNISHED TO IT BY SUCH WATER AND SEWER DISTRICT AT REASONABLE COST AND THAT THE WITHDRAWAL OF SUCH AREA WILL BE CONDUCIVE TO THE GENERAL WELFARE OF THE BALANCE OF THE DISTRICT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 32, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 42-3219B, Idaho Code, and to read as follows:

42-3219B. EXCLUSION AND REMOVAL OF LANDS FOLLOWING REJECTION TWICE BY ELECTORATE OF CERTAIN PROPOSALS FOR CREATION OF INDEBTEDNESS — ALTERNATIVE PROCEDURE. — The board of directors of the district may, upon rejection by the district electorate of substantially the same proposal in two (2) separate elections (whether held prior to or after enactment of this section) for the creation of indebtedness for the purpose of acquisition, construction, installation or completion of any works or other improvement or facilities or the making of any contract to carry out the purposes of the district, petition the district
court of the judicial district in which the majority of the property subject of
the petition is located for exclusion and removal of lands from such water
and sewer district. Such petition shall include a general description of the
boundaries of the area to be excluded from the district with such certainty
as to enable a property owner to determine whether or not his property is
within the area to be excluded and shall be verified. The board of directors
of the district, as petitioners, shall cause notice of filing of such petition to
be published in a newspaper of general circulation in the county in which
said property, or the major portion thereof is located, once a week for three
(3) consecutive weeks. Such notice shall state the date of filing of such
petition, shall include a description of the boundaries of the area to be
excluded from the district with such certainty as to enable a property owner
to determine whether or not his property is within the area to be excluded,
and shall notify all persons interested to appear at the designated court at
the time stated in said notice, showing cause in writing, if any they have,
why said petition should not be granted. At any time before the expiration
of the time of publication, any person may file his objection to said petition.
At the time and place designated in the notice, or at the time or times at
which the hearing of said petition may be adjourned, the court shall proceed
to hear the petition and all objections thereto presented in writing by any
person showing cause as aforesaid.

The court shall grant such petition upon finding that said proposals for
the creation of indebtedness were twice rejected by the electors of the whole
district, and upon the finding that said area so designated by the petition for
exclusion and removal forms a contiguous area and either has no need for
water or sewage disposal services or reasonably constitutes a separate area for
purposes of water and sewage disposal services; or is of such location and
character that water or sewage disposal services cannot be furnished to it by
such water and sewer district at reasonable cost and that the withdrawal of
such area will be conducive to the general welfare of the balance of the
district.

The granting of such petition by the court and such exclusion of said
property from the district shall not relieve such property from paying any
bond indebtedness of the district existing at the time of said exclusion order
against any such property so excluded, nor shall the granting of such petition
and exclusion of such property relieve such property of any levy for the
support of said district for the year in which it is removed.

The procedure for the exclusion and removal of lands from a water and
sewer district as provided in this section shall be an alternative to the procedures provided in sections 42-3219 and 42-3219A, 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 March 4, 1971.

CHAPTER 61
(H. B. No. 211)

AN ACT
AMENDING SECTION 31-4401, IDAHO CODE, TO DEFINE "SYSTEM";
AMENDING SECTION 31-4402, IDAHO CODE, TO PROVIDE THAT A COUNTY MAY ACQUIRE SOLID WASTE DISPOSAL SYSTEMS, AND CHANGING THE TERM "SITES" TO "SYSTEMS";
AMENDING SECTION 31-4403, IDAHO CODE, AND TO PROVIDE THAT A COUNTY MUST ACQUIRE SITES OR FACILITIES, AND CHANGING THE TERM "SITES" TO "SYSTEMS"; AMENDING SECTION 31-4404, IDAHO CODE, TO PROVIDE THAT A COUNTY MAY ESTABLISH A SOLID WASTE COLLECTION SYSTEM AND PROVIDE FOR A METHOD FOR COLLECTION OF SERVICE FEES, AND CHANGING THE TERM "SITES" TO "SYSTEMS"; AMENDING SECTION 31-4405, IDAHO CODE, BY CHANGING THE TERM "SITES" TO "SYSTEMS"; AMENDING SECTION 31-4406, IDAHO CODE, BY CHANGING THE TERM "SITES" TO "SYSTEMS"; AMENDING SECTION 31-4407, IDAHO CODE, BY CHANGING THE TERM "SITES" TO "FACILITIES"; AMENDING SECTION 31-4408, IDAHO CODE, BY CHANGING THE TERM "SITES" TO "SYSTEMS"; AMENDING SECTION 31-4409, IDAHO CODE, BY CHANGING THE TERM "SITE" TO "SYSTEM"; AND AMENDING SECTION 31-4410, IDAHO CODE, BY CHANGING THE TERM "SITES" TO "SYSTEMS".

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

SECTION 1. That Section 31-4401, Idaho Code, be, and the same is hereby amended to read as follows:

31-4401. PURPOSE AND POLICY OF LAW. — It is hereby declared
to be the public policy of the state of Idaho that solid waste disposal systems be established, maintained and operated in each of the several counties of the state for the purpose of reducing the threat to health posed by uncollected garbage, refuse and scrap; for the purpose of maintaining the natural and esthetic setting of our land, water and air resources; for the purpose of providing a means for reclamation of otherwise unusable land areas; and for the purposes of such other cultural, social, economic and sanitation reasons as may be necessary from time to time.

For the purposes of this chapter, "system" means lands, sites, facilities, equipment and manpower necessary for collection, transportation, storage, treatment, processing, reuse, recycling or other means necessary for the disposal of solid waste.

SECTION 2. That Section 31-4402, Idaho Code, be, and the same is hereby amended to read as follows:

31-4402. AUTHORITY OF COUNTY COMMISSIONERS. - The board of county commissioners in each of the several counties is hereby authorized to acquire, establish, maintain and operate such solid waste disposal systems as are necessary and to provide reasonable and convenient access to such disposal systems by all the citizens of the county. For the purpose of establishing systems for solid waste disposal, the board of county commissioners may purchase, lease, condemn or receive as gifts such areas as are suitable, or the board may exchange land with any other unit or units of government under such terms as are mutually advantageous. In order that a county may acquire sites or systems as expeditiously and advantageously as possible, a county may use funds from current revenues for site acquisition, or may use funds made available through the issuance of bonds for solid waste disposal site acquisition, or may use funds made available from county building construction funds for solid waste disposal site acquisition, and the provisions of chapter 10, title 31, Idaho Code, are hereby made applicable for the acquisition of solid waste disposal systems and a solid waste disposal site system is declared to be a public building within the definition of chapter 10, title 31, Idaho Code.

SECTION 3. That Section 31-4403, Idaho Code, be, and the same is hereby amended to read as follows:

31-4403. OPERATION AND MAINTENANCE. - It shall be the duty of the board of county commissioners in each of the several counties to acquire sites or facilities, and maintain and operate solid waste disposal sites-
systems. Such maintenance and operation may be performed through or by:

(1) Employees, facilities, equipment and supplies hired by or acquired by the board of county commissioners;
(2) Contracts entered into by the board to have the maintenance and operation performed by private persons;
(3) Contracts entered into by the board to have the maintenance and operation performed by another unit of government;
(4) Franchises, granted pursuant to law by the board, for all or any part or parts of the county;
(5) Any combination of subsections (1), (2), (3), and (4) of this section.

SECTION 4. That Section 31-4404, Idaho Code, be, and the same is hereby amended to read as follows:

31-4404. FUNDING OF OPERATIONS. For the purpose of providing funds to acquire sites, facilities, operate and/or maintain solid waste disposal systems, a board of county commissioners may in addition to the authority granted in sections 31-4402 and 31-4403, Idaho Code:

(1) Levy a tax of not to exceed two (2) mills on the assessed value of property within the county, provided that property located within the corporate limits of any city that is operating and maintaining a solid waste disposal site shall not be levied against for the purposes of the county solid waste disposal system; or,
(2) Collect fees from the users of the solid waste disposal facilities; or,
(3) Finance the solid waste disposal facilities from current revenues; or,
(4) Receive and expend moneys from any other source;
(5) Establish solid waste collection systems where necessary or desirable and provide a method for collection of service fees, among which shall be certification of a special assessment on the property served;
(6) Use any combination of subsections (1), (2), (3), and (4), and (5) of this section.

SECTION 5. That Section 31-4405, Idaho Code, be, and the same is hereby amended to read as follows:

31-4405. RULES AND REGULATIONS — NOTICE OF VIOLATION — MISDEMEANOR — INJUNCTION. All solid waste disposal systems shall be located, maintained and operated according to rules and regulations promulgated and adopted by the state board of health. Every person who violates any of the provisions of this act, or of any order, rule or
regulation of the state board of health issued pursuant thereto, where a copy of the order, rule or regulation has been served upon said person by certified mail, and said person fails to comply therewith within the time provided in the order, rule or regulation, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor. In the event of a continuing violation, each day that the violation continues constitutes a separate and distinct offense. In addition to the criminal penalties provided by this act, whenever it appears to the state board of health that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or of any rule or regulation promulgated and adopted under the provisions of this act, the board may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or regulation hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this act or any rule or regulation hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The board of health shall not be required to furnish bond.

SECTION 6. That Section 31-4406, Idaho Code, be, and the same is hereby amended to read as follows:

31-4406. ORDINANCES REGULATING OPERATIONS AND MAINTENANCE — CRIMINAL PENALTIES — INJUNCTION. — The board of county commissioners shall by ordinance provide for the necessary rules and regulations for the operation and maintenance of solid waste disposal systems. In addition to the criminal penalties provided for violation of a county ordinance, whenever it appears to the board of county commissioners that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or of a county ordinance enacted pursuant to this act, the board may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any ordinance hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this act or ordinance hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The board of county commissioners shall not be required to furnish bond.

SECTION 7. That Section 31-4407, Idaho Code, be, and the same is hereby amended to read as follows:
31-4407. EXISTING AND FUTURE MUNICIPAL SOLID WASTE DISPOSAL FACILITIES TO CONFORM TO CHAPTER. — Solid waste disposal facilities now in existence or hereafter established and maintained and/or operated by any city shall conform in the same manner as county solid waste disposal facilities as provided in section 31-4405, Idaho Code.

SECTION 8. That Section 31-4408, Idaho Code, be, and the same is hereby amended to read as follows:

31-4408. EXISTING AND FUTURE SITES — JURISDICTION OF COMMISSIONERS — DISPOSITION OF WASTE ON OWN LAND. — Solid waste disposal systems now in existence or hereafter established and maintained and/or operated by other than a city shall come under the jurisdiction of the board of county commissioners, and shall be maintained and/or operated only as provided in this act. Every owner of land who disposes of solid waste on his own land shall obtain a written permit from the board of county commissioners for such disposal.

SECTION 9. That Section 31-4409, Idaho Code, be, and the same is hereby amended to read as follows:

31-4409. JOINT OPERATION BY COUNTIES. — Any maintenance and/or operation of a solid waste disposal system required by this act may be done jointly with any other county or counties.

SECTION 10. That Section 31-4410, Idaho Code, be, and the same is hereby amended to read as follows:

31-4410. DISPOSAL OF WASTE AT PLACE OTHER THAN WASTE DISPOSAL SYSTEM — MISDEMEANOR — CIVIL DAMAGES — VENUE OF ACTION. — It shall be a misdemeanor, except at solid waste disposal systems located, maintained and operated as provided by this act, for any person to throw away, dump or discard any type or nature of solid waste on any public lands, rights of way of any kind, or private land of another. In addition to the criminal penalties for violation of this section, civil damages in an amount of three (3) times the actual damage shall be imposed upon the person so convicted to be used to restore the lands to their original state. Such civil actions shall be brought in and for the county in which the violation occurred, and any remainder of damages collected after restoration shall be used for maintenance and operation of solid waste disposal systems.

Approved March 4, 1971.
AN ACT
AMENDING SECTION 63-603, IDAHO CODE, BY STRIKING THE STATE CAPITOL AS BEING THE PLACE FOR THE COMMISSION TO MEET AND BY STRIKING THE COMMISSION'S EXECUTIVE OFFICER AS BEING THE PERSON TO RECEIVE ABSTRACTS OF ASSESSMENT.

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

SECTION 1. That Section 63-603, Idaho Code, be, and the same is hereby amended to read as follows:

63-603. MEETING OF COMMISSION. - The state tax commission shall meet at the state capitol on the second Monday in August in each year, and, if all the abstracts of assessments in the several counties in the state have then been received by the commission's executive officer, such abstracts shall be laid before the said commission, which shall then and there proceed to equalize the assessment throughout the state as provided in this act.

Approved March 4, 1971.

CHAPTER 63
(H. B. No. 153)

AN ACT
AMENDING SECTION 63-2702, IDAHO CODE, BY STRIKING "BEGINNING WITH JULY 15, 1931" AS ORIGINAL DATE FOR REMITTING LICENSE TAX, PROVIDING THAT LICENSE TAX ON ELECTRICITY BE REMITTED TO STATE TAX COMMISSION RATHER THAN COMMISSIONER OF LAW ENFORCEMENT; AMENDING SECTION 63-2703, IDAHO CODE, BY STRIKING "ON OR BEFORE JULY 15, 1931" AS ORIGINAL DATE FOR CERTIFICATE TO BE FILED BY PRODUCER, PROVIDING THAT CERTIFICATE OF PRODUCER BE FILED WITH AND ON FORMS PRESCRIBED BY STATE TAX COMMISSION RATHER THAN COMMISSIONER OF LAW ENFORCEMENT; AMENDING SECTION
63-2704, IDAHO CODE, BY STRIKING "BEGINNING WITH JULY 15, 1949" AS ORIGINAL DATE FOR FILING MONTHLY STATEMENT OF KILOWATT HOURS PRODUCED, PROVIDING THAT MONTHLY STATEMENT OF KILOWATT HOURS PRODUCED BE SUBMITTED ON FORMS PREPARED AND FURNISHED BY THE STATE TAX COMMISSION RATHER THAN THE COMMISSIONER OF LAW ENFORCEMENT SUBJECT TO RULES AND REGULATIONS PRESCRIBED BY THE STATE TAX COMMISSION RATHER THAN COMMISSIONER OF LAW ENFORCEMENT, INSPECTION TO BE VESTED WITH THE STATE TAX COMMISSION RATHER THAN THE COMMISSIONER OF LAW ENFORCEMENT; AMENDING SECTION 63-2705, IDAHO CODE, PROVIDING FOR STATEMENT OF AMOUNT OF ELECTRICAL ENERGY EXEMPT BE FURNISHED TO THE TAX COMMISSION OF THE STATE OF IDAHO RATHER THAN COMMISSIONER OF LAW ENFORCEMENT; AMENDING SECTION 63-2707, IDAHO CODE, PROVIDING THAT ANY PERSON FILING A FALSE STATEMENT WITH THE STATE TAX COMMISSION RATHER THAN COMMISSIONER OF LAW ENFORCEMENT BE DEEMED GUILTY OF PERJURY; AMENDING SECTION 63-2708, IDAHO CODE, PROVIDING THAT ANY PRODUCER WHO SHALL FAIL TO PAY LICENSE TAX TO STATE TAX COMMISSION RATHER THAN COMMISSIONER OF LAW ENFORCEMENT SHALL BE LIABLE FOR THREE TIMES UNPAID OR DELINQUENT TAX; AND REPEALING SECTIONS 63-2709 AND 63-2710, IDAHO CODE.

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

SECTION 1. That Section 63-2702, Idaho Code, be, and the same is hereby amended to read as follows:

63-2702. PAYMENT OF TAX — INTEREST ON DELINQUENCIES.
— Said license tax shall be remitted with the statement and paid on or before the fifteenth day of each month, beginning with July 15, 1931, to the commissioner of law enforcement, state tax commission, who shall receipt therefor and promptly turn same over to the state treasurer, as other receipts of his office, and the state treasurer shall place same to the credit of the general fund. Taxes not paid on the due date shall become delinquent and shall bear interest from said due date at the rate of ten per cent per annum.

SECTION 2. That Section 63-2703, Idaho Code, be, and the same is hereby amended to read as follows:
63-2703. CERTIFICATE OF PRODUCER — CONTENTS. — On or before July 15, 1931, every producer referred to in section 63-2701 engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the commissioner of law enforcement tax commission of the state of Idaho, on forms prescribed, prepared and furnished by the commissioner of law enforcement, state tax commission, a duly acknowledged and verified certificate which shall contain: a, the name under which the producer is transacting business in the state of Idaho; b, his or its post-office address and principal place of business within the state; c, the address and location of his or its production plants or stations in Idaho; d, the name and address of the managing agent; e, the names and addresses of the several persons composing any firm or partnership constituting the producer, and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its officers, directors, resident general agent and attorney in fact; f, certified copies of any papers necessary to show that such producer has complied with the laws of the state of Idaho in order to transact business in Idaho.

SECTION 3. That Section 63-2704, Idaho Code, be, and the same is hereby amended to read as follows:

63-2704. MONTHLY STATEMENT OF KILOWATT HOURS PRODUCED. — Every such producer shall on or before the fifteenth day of each calendar month, beginning with July 15, 1949, and monthly thereafter, render to the commissioner of law enforcement state tax commission of the state of Idaho on forms prescribed, prepared and furnished by the commissioner of law enforcement, state tax commission, a statement sworn to by the manager, president, secretary or treasurer of such producer, showing the number of kilowatt hours of electricity and electrical energy produced, generated or manufactured by him or it in the state of Idaho during the preceding calendar month, through and by means of water power, and the number of kilowatt hours subject to the tax imposed by this chapter. For the purpose of measuring such electricity and electrical energy such producer shall keep and maintain at the point or points of production, a recording watt hour meter or meters, or other suitable instrument for measuring the electricity or electrical energy produced, of a type to be approved by the commissioner of law enforcement state tax commission, and, subject to rules and regulations prescribed by the commissioner of law enforcement state tax commission under this chapter, shall compute the
number of kilowatt hours subject to the tax imposed by this chapter during each monthly period, such recordings and computations to be kept on file at the principal place of business of such producer within the state of Idaho and same together with the books and records of such producer shall be subject to the inspection of the commissioner of law enforcement, his state tax commission, their deputies or assistants, during reasonable business hours.

SECTION 4. That Section 63-2705, Idaho Code, be, and the same is hereby amended to read as follows:

63-2705. EXEMPTION OF ELECTRICITY FOR PUMPING WATER FOR IRRIGATION PURPOSES. — All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Idaho or for pumping water for drainage purposes on or from land in the state of Idaho is exempt from the provisions of this chapter, except in cases where the water so pumped is sold or rented to such irrigated lands: provided, the exemption here given shall accrue to the benefit of the consumer of such electricity or electrical energy: provided further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemptions had not been made, shall be credited annually for the year in which the exemptions are made on the power bill to the consumer by the producer of such electricity and electrical energy, furnishing such power, and such producer shall include a statement of the amount of electricity and electrical energy exempted by this section, furnished by it for the purpose of pumping water for irrigation purposes on lands in the state of Idaho, or for the purpose of pumping water for drainage purposes on or from lands in the state of Idaho to the commissioner of law enforcement tax commission of the state of Idaho as a part of the statement required by section 63-2701, together with a statement of the credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Idaho, or for pumping water for drainage purposes on or from lands in the state of Idaho.

SECTION 5. That Section 63-2707, Idaho Code, be, and the same is hereby amended to read as follows:

63-2707. PENALTY FOR FALSE STATEMENT OR AFFIDAVIT. — Any person, officer, partner, agent or representative of any producer referred to in section 63-2701, who shall make any false statement or affidavit in any certificate, report or statement herein required to be made to
the commissioner of law enforcement state tax commission hereunder shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary not less than one nor more than fourteen years.

SECTION 6. That Section 63-2708, Idaho Code, be, and the same is hereby amended to read as follows:

63-2708. FAILURE TO PAY LICENSE — TRIPLE LIABILITY — INJUNCTION. — Any producer referred to in section 63-2701 who shall violate any of the provisions of this chapter or who shall fail to pay the license tax herein provided for, or any part thereof, when due shall be liable for three times the amount of the unpaid or delinquent tax, in a civil action instituted for that purpose in any court of competent jurisdiction, by the commissioner of law enforcement state tax commission in the name of the state of Idaho, and in such suit upon application of the state, an injunction may be issued, without requiring any bond, restraining the defendant from continuing to produce electricity or electrical energy so long as any taxes due hereunder from said defendant remain delinquent.

SECTION 7. That Sections 63-2709 and 63-2710, Idaho Code, be, and the same are hereby repealed.

Approved March 4, 1971.

CHAPTER 64
(H. B. No. 135)

AN ACT
AMENDING SECTION 63-3022, IDAHO CODE, BY STRIKING THEREFROM SUBSECTION (j) PROVIDING FOR SUBTRACTION OF 50% OF NET LONG TERM CAPITAL GAIN OVER NET SHORT TERM CAPITAL LOSS FOR CORPORATE TAXPAYERS IN CERTAIN INSTANCES, AND BY RENUMBERING CERTAIN SUBSEQUENT SUBSECTIONS OF SECTION 63-3022, IDAHO CODE; AND DECLARING AN EMERGENCY AND MAKING THIS ACT RETROACTIVE TO JANUARY 1, 1971.

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

SECTION 1. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:
63-3022. TAXABLE INCOME. — The term "taxable income" means "taxable income" as defined in section 63 of the Internal Revenue Code, adjusted as follows:

(a) Add interest and dividends received or accrued during the taxable year from foreign securities and from securities issued by states and other political subdivisions exempt from federal income tax under the Internal Revenue Code, less applicable amortization.

(b) Add any state taxes, measured by net income, paid or accrued during the taxable year adjusted for state tax refunds used in arriving at taxable income as defined in section 63 of the Internal Revenue Code.

(c) In the case of persons other than corporations, subtract the amount of federal income tax accrued, after reduction for investment, retirement, or similar applicable credits; providing, however, that the federal income tax deduction shall be increased by the amount of the credit for foreign income, war, or excess profits taxes allowed for federal tax purposes in the same year. For the first taxable year beginning on or after January 1, 1969, the deduction permitted by this subsection to taxpayers whose prior deductions for federal income taxes were taken on the cash basis shall be the greater of:

(1) federal income tax liability as determined for such taxable year; or
(2) federal income tax liability as determined for the immediately preceding taxable year, but in no event shall both deductions be permitted in the same tax year.

(d) Add the net operating loss deduction used in arriving at taxable income as defined in section 63 of the Internal Revenue Code.

(e) Subtract any net operating loss incurred in the five (5) next preceding taxable years; provided, however, such net operating loss shall be subtracted first in the first succeeding taxable year, and any excess not so subtracted may then be subtracted in the second succeeding taxable year, and any excess shall be subtracted in each succeeding taxable year in order until the net operating loss is exhausted, but the total subtracted in such succeeding taxable years shall not exceed the total of such net operating loss; provided, further, that net operating losses arising in taxable years commencing on or after January 1, 1964, must first be carried back to the three (3) taxable years preceding the year of such net operating loss in the manner provided in Internal Revenue Code section 172 except that no such net operating loss shall be carried back to any taxable year commencing before January 1, 1963; and provided, further, that net operating losses accumulated in any taxable years commencing before January 1, 1964 shall
be carried forward as provided in the beginning part of this subsection before any carry-back from a succeeding taxable year shall be taken into consideration.

(f) In the case of a corporation, add the amount deducted under the provisions of section 243(a) of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(g) In the case of a corporation, subtract an amount equal to 85 percent of the amount received during the taxable year as dividends, as limited by the rules of section 246(b)(1) of the Internal Revenue Code, from any corporation which has shown to the satisfaction of the state tax commission that more than 50 percent of its taxable income for the taxable year immediately preceding the declaration of such dividends was taxable by the state of Idaho under the provisions of this act.

(h) In the case of persons other than corporations, in calculating the limitation imposed by section 613(a) of the Internal Revenue Code relating to depletion allowances, the following adjustments shall apply:

1. No deduction shall be included for any state taxes measured by income; and

2. Federal income tax shall be included as a deduction in measuring the taxable income from the property for which the depletion allowance is being computed.

(i) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income, as defined by section 63 of the Internal Revenue Code.

(j) In the case of a corporation, subtract an amount equal to fifty percent (50%) of the excess of the net long-term capital gain over the net short-term capital loss, provided, however, that this subtraction shall not be taken into account in the determination of a net operating loss or be allowed as a deduction for any taxable year, the taxable income of which is subtracted from the net operating loss to determine the portion of such net operating loss which is a carry-back or carry-over to another taxable year.

(k)(j) In the case of a corporation with more than fifty percent (50%) of its income taxable within this state, the salary, fee or other compensation of its nonresident officers or directors shall be treated as income from sources within the state. Whether or not any personal services have been
performed by such nonresident officers or directors in this state, they shall be deemed to have a business situs in this state. If such salary, fee or other compensation is not reported to this state as income, such corporation shall not deduct as part of its expenses for the taxable year any part of such salary, fee or other compensation in computing taxable income.

(4)(k) For the purpose of determining the taxable income of the beneficiary of a trust or of an estate, distributable net income as defined for federal tax purposes shall be adjusted by substituting for the state tax deduction taken by the trust or estate for federal tax purposes (where appropriate) the federal tax deduction otherwise taken by the fiduciary for Idaho tax purposes. Distributable net income shall also be corrected for the other adjustments required by this section.

(m)(l) In case of an individual who is on active duty with the armed forces of the United States during any part of the tax year, deduct compensation paid by the armed forces of the United States; providing that appropriate adjustments shall be made in his standard deductions, exemptions and federal income tax deduction as described in section 63-3027(t), 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, and retroactively to January 1, 1971.

Approved March 4, 1971.

CHAPTER 65
(H. B. No. 48 as amended in the Senate)

AN ACT
AMENDING SECTION 19-4705, IDAHO CODE, RELATING TO DISPOSITION AND APPORTIONMENT OF FINES AND FORFEITURES, BY PROVIDING THAT FINES AND FORFEITURES REMITTED FOR VIOLATION OF STATE MOTOR VEHICLE LAWS, WHERE AN ARREST IS MADE OR A CITATION IS ISSUED BY A CITY LAW ENFORCEMENT OFFICIAL, SHALL BE APPORTIONED TEN PER CENT TO THE STATE TREASURER AND NINETY PER CENT TO THE CITY WHOSE LAW ENFORCEMENT OFFICIAL ISSUED THE CITATION, AND
PROVIDING THAT FINES AND FORFEITURES REMITTED FOR VIOLATIONS NOT SPECIFIED BY THIS ACT SHALL BE APPORTIONED TEN PERCENT TO THE STATE GENERAL FUND AND NINETY PERCENT WHERE A CITY OFFICER MADE THE ARREST TO THE CITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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 [EFFECTIVE JANUARY 11, 1971]. — (a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which such judgment was rendered. Such 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 act. Every other existing law regarding the disposition of fines and forfeitures is hereby repealed to the extent such law is inconsistent with the provisions of this act.

(b) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund, forty-five per cent (45%) to the director of the fish and game department for deposit in the fish and game fund, twenty-two and one-half per cent (22½%) to the current expense fund and twenty-two and one-half per cent (22½%) to the general school fund of the county in which the violation occurred.

(c) Fines and forfeitures remitted for violation of state motor vehicle laws shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund, forty-five per cent (45%) to the state treasurer for deposit in the state highway fund, twenty-two and one-half per cent (22½%) to the current expense fund and twenty-two and one-half per cent (22½%) to the general school fund of the county in which the violation occurred; provided, however, that fines and forfeitures remitted for violation of state motor vehicle laws, where an arrest is made or a citation is issued by a city law enforcement official, shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (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 or motor vehicles laws shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the current expense fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the current expense fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this act shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the current expense fund of the county in which the violation occurred except in cases where a duly designated officer of any city police department shall have made the arrest for any such violation, in which case ninety per cent (90%) shall be apportioned to the city whose officer made the arrest.

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 March 4, 1971.

CHAPTER 66
(H. B. No. 140)

AN ACT
TO PROVIDE FOR LABELING OF PREPACKAGED POULTRY TO SHOW GRADE AND GRADING AGENCY; THAT UNPACKAGED POULTRY BE LABELED OR IDENTIFIED AS TO GRADING AND GRADING AGENCY; TO PROVIDE THAT ADVERTISEMENTS STATE THE GRADE OF SUCH POULTRY; PROVIDING THAT THE COMMISSIONER OF AGRICULTURE MAY EXEMPT CERTAIN POULTRY GROWERS; PROHIBITING RETAIL SALES OF
POULTRY OF DIFFERENT GRADES WITHIN THE SAME DISPLAY CASE; PROVIDING THAT THE INFORMATION REQUIRED TO BE GIVEN BE LEGIBLE AND EASY TO READ; DEFINING POULTRY; PROVIDING THAT ALL POULTRY SOLD AT RETAIL WHICH HAS BEEN FROZEN BEAR A LABEL SO INDICATING; THAT THE COMMISSIONER OF AGRICULTURE SHALL APPOINT INSPECTORS TO ENFORCE THIS ACT.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. Prepackaged poultry offered for sale or sold in Idaho at retail shall bear a label on the package which can be easily seen by any prospective purchaser stating that such poultry has been graded and the label shall also show the grade designation and the name of the governmental agency, state or federal, which graded such poultry except as hereinafter provided for.

SECTION 2. Unpackaged poultry offered for sale or sold in Idaho at retail shall either be labeled or a sign shall be prominently displayed in connection with the offer to sell or sale of such poultry showing that such poultry has been graded, its grade designation, and the name of the governmental agency, state or federal, which graded such poultry except as otherwise provided for herein.

SECTION 3. Any advertisements concerning the sale of poultry in the news media or otherwise shall state that all such poultry has been graded and shall state the specific grade of such poultry.

SECTION 4. The commissioner of agriculture may exempt small poultry growers raising not more than two hundred and fifty (250) turkeys or one thousand (1,000) chickens or other poultry per year, and in promulgating such regulations he shall consider the exemptions to the federal poultry inspection and grading laws. The ungraded poultry herein provided for shall be clearly so designated when offered for sale, advertised for sale, or in anywise sold at retail in Idaho.

SECTION 5. No person shall sell at retail or display for sale at retail in Idaho any poultry of different grades within the same display cases or bins unless the different grades of poultry are separated so that each grade is offered for sale in separate displays and in a manner that will not confuse the consumer.

SECTION 6. The information required to be displayed in connection with the sale and advertisement of poultry as required by this act shall be clearly legible and easily read.
SECTION 7. For the purposes of the above sections of this act, poultry means whole or cut-up individual frying chickens and turkeys, and it does not apply to cut-up parts, such as packages of breasts, wings, thighs, drumsticks, etc., nor does this act apply to the sale of poultry to eating places or institutions nor does it apply to poultry which has been processed or cooked.

SECTION 8. All poultry, whether included in sections 1 through 7 of this act or not, which is offered for sale, advertised for sale, or sold in Idaho at retail, which has been frozen at any time and is being offered for sale in a thawed state, shall bear a label or sign posted at the point of sale clearly discernible to a customer stating that such product was once frozen and has since been thawed.

SECTION 9. The commissioner of agriculture shall provide for and appoint inspectors to enforce this act.

Approved March 4, 1971.

CHAPTER 67
(H. B. No. 108)

AN ACT
AMENDING SECTION 25-131, IDAHO CODE, BY PROVIDING THAT THE ANNUAL ASSESSMENT ON EACH SHEEP SHALL NOT EXCEED THIRTY CENTS; AND DECLARING AN EMERGENCY PROVIDING THAT THE ACT IS RETROACTIVELY EFFECTIVE TO JANUARY 1, 1971.

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

SECTION 1. That Section 25-131, Idaho Code, be, and the same is hereby amended to read as follows:

25-131. SHEEP COMMISSION FUND — ANNUAL ASSESSMENT — APPROPRIATION. — There is hereby levied and imposed an annual assessment on each sheep, one (1) year or older, within the state of Idaho at a rate not to exceed twenty thirty cents ($0.20) ($0.30) per head. In the event a sheep does not remain in the state for the entire year, the assessment imposed upon such sheep shall be as follows: the actual assessment imposed during the year multiplied by the ratio that the number of estimated or actual days the sheep is or will be in the state bears to the total number of days in that year.
The assessment shall be collected each calendar year by the board from and after a time designated by the board as the due date for the assessment. All moneys collected by the board under the provisions of this act shall be paid to the state treasurer. All moneys received from the assessment shall be deposited in the state treasury by the state treasurer to the credit of a special fund hereby created to be known as the "sheep commission fund."

In addition thereto, the said fund shall consist of any appropriations made by the legislature for the use of and expenditure by said board. All fees of every kind collected under the provisions of this act, or under any rules and regulations made pursuant to the provisions of this act, shall be deposited in the state treasury in the manner hereinabove described. The moneys in said special fund are hereby appropriated for the use and expenditure of said board carrying out the provisions of this act and the rules and regulations made herein and said fund is hereby declared to be a continuing fund.

All moneys received by the state board of sheep commissioners from that portion of the special assessment which is made to carry on the predatory animal work shall be expended by the sheep commission in the respective districts comprising the counties where the assessment was collected less the actual and necessary administrative costs for carrying out the provisions of this act. All moneys received by such fund for predatory animal work except as herein otherwise provided shall be expended by the sheep commission within the district or districts specified by the party or agency providing such funds and any trust fund must be held inviolate for the purposes of the trust.

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, and retroactively to January 1, 1971.

Approved March 4, 1971.

CHAPTER 68
(S. B. No. 1108)

AN ACT
CHANGING THE NAME OF NORTH IDAHO JUNIOR COLLEGE TO NORTH IDAHO COLLEGE; AND PROVIDING AN EFFECTIVE DATE.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the educational institution located in Coeur d'Alene, Idaho, heretofore known as North Idaho Junior College, shall be known after the effective date of this act as North Idaho College; and wherever the name North Idaho Junior College shall appear in any statute, such statute hereby is amended to read North Idaho College as fully and completely as though the said name on said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean North Idaho College.

SECTION 2. This act shall be in full force and effect on and after July 31, 1971.

Approved March 8, 1971.

CHAPTER 69
(H.B. No. 188)

AN ACT
AMENDING SECTION 34-206, IDAHO CODE, BY STRIKING THE REQUIREMENT FOR COOPERATION BETWEEN TWO OR MORE COUNTY CLERKS AND PROVIDING THAT LOCAL ELECTION OFFICIALS SHALL COMPLY WITH THE DIRECTIVES AND INSTRUCTIONS OF THE COUNTY CLERK AS TO SUPERVISION OF ADMINISTRATION OF ELECTION LAWS; REPEALING SECTION 34-207, IDAHO CODE; AMENDING SECTION 34-208, IDAHO CODE, BY ELIMINATING THE AUTHORITY FOR EACH COUNTY CLERK TO PRESCRIBE HIS OWN BALLOT FORMS AND RECORDS, AND PROVIDING THAT EACH LOCAL ELECTION OFFICIAL SHALL USE SUCH BALLOT FORMS AND RECORDS AS DIRECTED BY THE SECRETARY OF STATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-206, Idaho Code, be, and the same is hereby amended to read as follows:

34-206. GENERAL SUPERVISION OF ADMINISTRATION OF ELECTION LAWS BY COUNTY CLERKS. — Subject to and in accordance with the directives and instructions prepared and distributed or given under the authority of the secretary of state, each county clerk shall exercise
general supervision of the administration of the election laws by each local election official in his county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in such administration by local election officials. Such directives and instructions shall be directed to and shall be complied with by each local election official affected thereby. If two (2) or more county clerks exercise general supervision under this section of the administration of the election laws by the same local election official, such county clerks shall cooperate and coordinate to insure uniformity of such general supervision.

SECTION 2. That Section 34-207, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 34-208, Idaho Code, be, and the same is hereby amended to read as follows:

34-208. DUTIES OF COUNTY CLERKS RELATING TO SUPERVISION OF ELECTION LAWS. — In carrying out his exercise of general supervision under section 34-206, each county clerk shall:

(1) Subject to and in accordance with any applicable election law, devise and prescribe for use by each local election official in his county in the administration of the election laws the contents, forms, character and kinds of ballots, papers, documents, records and other materials and supplies required or permitted by the election laws or otherwise necessary in such administration by such local election officials. Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies so prescribed as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local election official in his county at any time he deems necessary.

(4) Carry on a program of in-service training for local election officials in his county by periodically distributing to them such bulletins, manuals and other informational and instructional materials and by establishing and conducting such classes of instruction pertaining to the administration of the election laws by local election officials as the county clerk considers desirable.

SECTION 4. 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 March 8, 1971.
CHAPTER 70
(S. B. No. 1075 as amended)

AN ACT

PROVIDING FOR THE ADOPTION OF MINIMAL HEALTH AND SAFETY STANDARDS IN THE INSTALLATION OF PLUMBING, HEAT PRODUCING AND ELECTRICAL SYSTEMS IN THE MANUFACTURE OF MOBILE HOMES AND RECREATIONAL VEHICLES; PROVIDING THAT THE COMMISSIONER OF LAW ENFORCEMENT SHALL ENFORCE AND ADMINISTER THE ACT ASSISTED BY THE STATE ELECTRICAL BOARD AND THE STATE PLUMBING BOARD; MAKING IT UNLAWFUL TO SELL OR OFFER FOR SALE A MOBILE HOME OR RECREATIONAL VEHICLE THAT IS NOT MANUFACTURED IN COMPLIANCE WITH THIS ACT; REQUIRING THE COMMISSIONER OF LAW ENFORCEMENT TO DEFINE CERTAIN TERMS AND TO ESTABLISH RECOGNIZED HEALTH AND SAFETY STANDARDS FOR PLUMBING, HEAT PRODUCING AND ELECTRICAL SYSTEMS USED IN THE MANUFACTURING OF MOBILE HOMES AND RECREATIONAL VEHICLES TO PROTECT THE HEALTH AND SAFETY OF THE USERS OF SUCH HOMES AND VEHICLES; AUTHORIZING THE COMMISSIONER OF LAW ENFORCEMENT TO ESTABLISH FEES TO PAY COSTS INVOLVED IN ADMINISTERING THE ACT; PROVIDING FOR AN INSIGNIA OF MOBILE HOMES OR RECREATIONAL VEHICLES WHICH MEET REQUIREMENTS; PROVIDING THAT CONVERSION OF THE PLUMBING, HEAT PRODUCING OR ELECTRICAL SYSTEM OF MOBILE HOMES OR RECREATIONAL VEHICLES IS UNLAWFUL UNLESS THEY MEET RULES ESTABLISHED BY THE COMMISSIONER OF LAW ENFORCEMENT; PERMITTING RECIPROCITY WITH OTHER STATES THAT MEET THE STANDARDS ADOPTED BY THE STATE OF IDAHO AND PROVIDING FOR INSPECTION OF MOBILE HOMES AND RECREATIONAL VEHICLES FROM STATES WHICH HAVE NOT ADOPTED STANDARDS; EXEMPTING MOBILE HOMES AND RECREATIONAL VEHICLES FROM CERTAIN LOCAL ORDINANCES OR REGULATIONS WHEN THEY MEET THE STANDARDS OF THIS ACT; PROVIDING THAT THE
COMMISSIONER OF LAW ENFORCEMENT SHALL CERTIFY SUPERVISORS IN PLANTS TO SUPERVISE THE INSTALLATION OF PLUMBING, HEAT PRODUCING AND ELECTRICAL SYSTEMS IN THE MANUFACTURING OF MOBILE HOMES AND RECREATIONAL VEHICLES, AND PROVIDING THE BASIS OF EXAMINATIONS AND THE ISSUANCE OF CERTIFICATES OF COMPETENCY TO SUCCESSFUL APPLICANTS, AND PROVIDING THAT THE COMMISSIONER OF LAW ENFORCEMENT SHALL SET FEES AND THE TIME AND PLACE FOR EXAMINATIONS, AND PROVIDING THAT ONLY ONE EMPLOYEE OF EACH PLANT OF A MANUFACTURER OF MOBILE HOMES OR RECREATIONAL VEHICLES NEED BE A CERTIFIED SUPERVISOR OF PLUMBING, ONLY ONE SUPERVISOR OF HEAT PRODUCING, AND ONLY ONE SUPERVISOR OF ELECTRICAL SYSTEMS, AND PROVIDING THAT NO OTHER FORM OF CERTIFICATE OR LICENSE SHALL BE REQUIRED FOR EMPLOYEES OF MANUFACTURERS OF MOBILE HOMES OR RECREATIONAL VEHICLES IN THE INSTALLATION OF THE PLUMBING, HEAT PRODUCING OR ELECTRICAL SYSTEMS IN THE MANUFACTURING OF MOBILE HOMES OR RECREATIONAL VEHICLES AND PROVIDING AUTOMATIC CERTIFICATION FOR JOURNEYMEN PLUMBERS AND ELECTRICIANS, AND PROVIDING THAT CERTIFIED SUPERVISORS SHALL NOT BE REQUIRED TO BE JOURNEYMEN PLUMBERS OR JOURNEYMEN ELECTRICIANS; PROVIDING SEVERABILITY, DECLARING LEGISLATIVE INTENT; AND DECLARING AN EMERGENCY.

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

SECTION 1. The state of Idaho has numerous manufacturers of mobile homes and recreational vehicles. In order to protect the users of mobile homes and recreational vehicles and encourage manufacturing of these units in accordance with reasonable standards of care, it is the intention of this legislature to adopt manufacturing standards and enforce them as a part of the industrial growth of the state of Idaho. Consistent with the standards being established, certain personnel will be qualified in the manufacturing plants to assure that the manufacturing process meets the standards established by this act.

SECTION 2. The commissioner of law enforcement shall enforce the provisions of this act. It shall be the responsibility and duty of the state
electrical and plumbing boards to assist the commissioner of law enforcement in the administration and enforcement of the provisions of this act as hereinafter provided.

SECTION 3. It is unlawful for any person, firm, partnership, association or corporation to sell or offer for sale within this state any mobile home or recreational vehicle that is not manufactured in compliance with this act after its effective date.

SECTION 4. (1) The commissioner of law enforcement shall by rule:
(A) Define the terms "mobile homes" and "recreational vehicles" to be consistent with national standards and the use of such terms in industry, and
(B) Adopt minimum health and safety standards for plumbing, heat producing and electrical systems installed in mobile homes and recreational vehicles while being manufactured. Such health and safety standards shall be reasonably consistent with nationally recognized standards to protect the health and safety of occupants and users of mobile homes and recreational vehicles.

(2) Such rules shall be enforced by the commissioner of law enforcement who shall delegate to the state electrical board and the state plumbing board the administration and enforcement of such health and safety standards as involve plumbing, heat producing and electrical systems.

SECTION 5. The commissioner of law enforcement is authorized to establish a schedule of fees to pay the cost of inspection and enforcement of this act without recourse to tax subsidies. Such fee schedule shall be consistent with the actual cost of maintaining the program.

SECTION 6. The commissioner of law enforcement shall issue insignia for mobile homes and recreational vehicles which meet the requirements of the rules and regulations promulgated by the commissioner of law enforcement. The cost of the insignia, if issued, shall be included as a part of the fee schedule.

SECTION 7. It is unlawful for any person to alter or convert, or cause to be converted, the plumbing, heat producing or electrical system of a mobile home or recreational vehicle which bears an insignia of approval, when such mobile home or recreational vehicle is used, occupied, sold or offered for sale within this state, and was manufactured subsequent to the effective date of this act, unless such alteration or conversion is in compliance with rules adopted by the commissioner of law enforcement. The commissioner of law enforcement shall adopt rules providing requirements for such alterations and conversions.
SECTION 8. If the commissioner of law enforcement determines that standards for mobile homes or recreational vehicles which have been adopted by the statutes or regulations of another state are at least equal to the standards adopted by the commissioner of law enforcement, the commissioner of law enforcement may so provide by regulation. Any mobile home or recreational vehicle which such other state has approved as meeting its standards, shall be deemed to meet the standards adopted by the commissioner of law enforcement.

If the commissioner of law enforcement determines that standards for mobile homes and recreational vehicles have not been adopted by another state, and mobile homes and recreational vehicles from that state are transported into this state to be offered for sale, then the commissioner may certify personnel to inspect the plumbing, heat producing and electrical systems of such mobile homes and recreational vehicles. If the commissioner shall determine that said units meet the standards of this state, then the product shall be acceptable and the commissioner may issue insignia for said mobile homes or recreational vehicles.

SECTION 9. No mobile home or recreational vehicle which meets the standards prescribed by this act and the rules adopted pursuant thereto shall be required to comply with any local ordinances or regulations adopting standards relating to plumbing, heat producing and electrical systems in mobile homes and recreational vehicles.

SECTION 10. The commissioner of law enforcement is hereby authorized to certify personnel in plants operating within the state of Idaho to supervise the installation of the plumbing, heat producing and electrical systems in the manufacturing of mobile homes and recreational vehicles. The commissioner of law enforcement shall conduct examinations and pass upon the qualifications of applicants and shall issue certificates of competency to such applicants as are found to be qualified to supervise the installation of plumbing, heat producing and electrical systems in manufacturing mobile homes and recreational vehicles. The commissioner of law enforcement shall base the examination upon the standards promulgated by this act. Upon certification of examination results, the commissioner of law enforcement shall issue certificates of competency to the successful applicants. The commissioner of law enforcement shall determine the time and place for examinations, the examination fee and the fee for certificates of competency. No other form of certification or licensing shall be required for employees of manufacturers of mobile homes or recreational vehicles in the
installation of the plumbing, heat producing or electrical systems in the manufacturing of mobile homes or recreational vehicles, provided, however, that each manufacturer of mobile homes or recreational vehicles shall be required to have only (a) one (1) certified supervisor for plumbing systems, and (b) one (1) certified supervisor for heat producing systems, and (c) one (1) certified supervisor for electrical systems. Certified supervisors shall be on duty in the plant at all times that a mobile home or recreational vehicle plant is manufacturing plumbing, heat producing or electrical systems. Journeymen plumbers shall be automatically certified as supervisors for plumbing and heat producing systems. Journeymen electricians shall be automatically certified as supervisors for electrical systems. Certified supervisors shall not be required to be journeymen plumbers or journeymen electricians.

SECTION 11. The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to the state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed.

SECTION 12. 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 March 8, 1971.
ADDITIONAL TIME, PROVIDED THAT SUCH LEVIES DO NOT EXCEED THE LEVY AUTHORIZED IN SECTION 31-4318, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 43, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 31-4322, Idaho Code, and to read as follows:

31-4322. BOND ISSUES AUTHORIZED — FORM AND TERMS. — To carry out the purposes of this chapter and to pay the necessary expenses of the district, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall be due and payable serially either annually or semiannually, commencing not later than three (3) years and extending not more than thirty (30) years from date. The form and terms of said bonds, including provisions for the rate of interest, their payment, and redemption shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity, upon payment of a premium not exceeding three per cent (3%) of the net principal thereof. Said bonds shall be executed in the name of, and on behalf of, the district and signed by the chairman of the board with the seal of the district affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board. In other respects, said bonds shall be issued, sold and paid in accordance with the provisions of the Municipal Bond Law of the state of Idaho.

SECTION 2. That Chapter 43, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 31-4323, Idaho Code, and to read as follows:

31-4323. CREATION OF INDEBTEDNESS FOR WORKS OR IMPROVEMENTS — ELECTION ON PROPOSED INDEBTEDNESS. — Whenever the board of a recreation district shall, by resolution, determine that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, completion or maintenance of any buildings, equipment or apparatus to carry out the objects or purposes of said district requiring the creation of an indebtedness of five thousand dollars ($5,000) or more, and in any event, when the indebtedness will exceed the income and revenue provided for the year, the board shall order the submission of the proposition of issuing such obligations or bonds or
creating other indebtedness to the qualified electors, at an election held for
that purpose. The declaration of public interest or necessity, herein required,
and the provision for the holding of such election, may be included within
one and the same resolution, which resolution, in addition to such
declaration of public interest or necessity, shall recite the objects and
purposes for which the indebtedness is proposed to be incurred, the
estimated cost of the works or improvements, as the case may be, the
amount of principal of the indebtedness to be incurred therefor, and the
maximum rate of interest to be paid on such indebtedness. Such resolutions
shall also fix the date upon which such election shall be held, and the
manner of holding the same, and the method of voting for or against the
incurring of the proposed indebtedness; such resolution shall also fix the
compensation to be paid the officers of the election and shall designate the
polling place or places and shall appoint for each polling place, from the
qualified electors who are taxpayers of the district, the officers of such
election, consisting of three (3) judges, one (1) of whom shall act as the
clerk, provided, however, that no district shall issue or have outstanding its
coupon bonds in excess of ten per cent (10%) of the assessed valuation of
the real estate and personal property within the said district, according to
the assessment of the year preceding any such issuance of such evidence of
indebtedness for any or all of the propositions specified in this election.

SECTION 3. That Chapter 43, Title 31, Idaho Code, be, and the same
is hereby amended by the addition thereto of a new section, to be known
and designated as Section 31-4324, Idaho Code, and to read as follows:

31-4324. NOTICES OF ELECTION ON PROPOSED
INDEBTEDNESS. When such election is ordered to be held, the board
shall cause printed or written notices of the intention to hold such an
election to be posted at two (2) or more conspicuous places in each precinct
within the district, and shall also cause a printed notice of the intention to
hold such an election to be published in one (1) or more newspapers within
the district, if a newspaper is published therein. Said notices shall recite the
action of the board in deciding to bond the district, the purpose thereof and
the amount of the bonds supposed to be issued, the estimated costs of the
works or improvements as the case may be, the amount of principal of the
indebtedness to be incurred therefor, and the maximum rate of interest to be
paid on such indebtedness, and shall also specify the date of the election, the
time during which the polls shall be open, which shall not be less than six (6)
hours. Notices shall also name the place holding the election. Notices shall be
posted, or posted and published as the case may be, at least twenty (20) days before such an election.

SECTION 4. That Chapter 43, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 31-4325, Idaho Code, and to read as follows:

31-4325. CONDUCT OF ELECTION FOR PROPOSED INDEBTEDNESS. — The election board or boards shall conduct the election in a manner prescribed by law for the holding of general elections and shall take their returns to the secretary of the district at any regular or special meeting of the board held within five (5) days following the date of such election. The returns thereof shall be canvassed and the results thereof shall be declared.

SECTION 5. That Chapter 43, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 31-4326, Idaho Code, and to read as follows:

31-4326. INDEBTEDNESS INCURRED UPON FAVORABLE VOTE RESUBMISSION OF PROPOSITION NOT RECEIVED FAVORABLY. — In the event that it shall appear from said returns that a majority, in the amount which is now, or may hereafter be, set by the constitution of the state of Idaho for approval of indebtedness, of the qualified electors of the district voting at such election shall have voted in favor of such proposition or any proposition submitted hereunder at such election, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract or issue and sell bonds of the district, as the case may be, all for the purpose or purposes, and object or objects provided for in the propositions submitted hereunder and in the resolution therefor and in the amount so provided at a rate of interest not exceeding the rate of interest recited in such resolution. The submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same, or other propositions, at subsequent election or elections called for such purpose at any time.

SECTION 6. That Chapter 43, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 31-4327, Idaho Code, and to read as follows:

31-4327. RECREATION DISTRICT RESERVE FUND. — The board of any recreation district may create and establish a recreation facilities reserve fund by resolution adopted at any regular or special meeting of the board. Moneys shall be credited to said fund which accrue from taxes levied
under section 31-4318, Idaho Code, as provided in section 31-4328, Idaho Code, together with interest accruing from the investment of any moneys in the fund.

SECTION 7. That Chapter 43, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 31-4328, Idaho Code, and to read as follows:

31-4328. RECREATION FACILITIES RESERVE FUND ELECTION. — In any recreation district in which a recreation facilities reserve fund has been created, the board may submit to the qualified electors of the district, the question of applying the levy of three (3) mills authorized in section 31-4318, Idaho Code, or a portion thereof, to the credit of the recreation facilities reserve fund.

The notice of such election shall state the number of mills proposed to be levied, the period of years in each of which the levy is proposed to be made, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be conducted and the returns canvassed as provided in sections 31-4323 through 31-4326, Idaho Code, and the levy shall be approved only if a majority, in the amount which is now, or may hereafter be, set by the constitution of the state of Idaho for approval of indebtedness, of the qualified voters vote in favor.

If the question be approved, the board may make a levy in each year according to the terms so approved, and may again submit the question at the expiration of the period of such levy, for the number of mills and the number of years which the board may at that time determine, or, during the period approved at any such election, if such period be less than ten (10) years or the number of mills be less than three (3), the board may submit to the qualified electors in the same manner as before, the question whether the number of years, or the number of mills, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

SECTION 8. 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 March 8, 1971.
CHAPTER 72
(S. B. No. 1028)

AN ACT
AMENDING CHAPTER 5, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-515A, IDAHO CODE, TO PROVIDE FOR SAFETY AND SANITARY EQUIPMENT AND CONDITIONS ON LOCOMOTIVES, CABOOSES AND CHANGE ROOMS.

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

SECTION 1. That Chapter 5, Title 61, Idaho Code, be, and the same is hereby amended by the addition of a new section, to be known and designated as Section 61-515A, Idaho Code, and to read as follows:

61-515A. SAFETY AND SANITARY EQUIPMENT AND CONDITIONS. — Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or a yard switching service and every car used in passenger service with a first aid kit of a type approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully equipped condition.

Each locomotive, caboose and change room shall be furnished with sanitary cups and sanitary ice-cooled or refrigerated drinking water.

Each locomotive, caboose and change room shall be maintained in a safe and sanitary condition at all times.

For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

Approved March 8, 1971.

CHAPTER 73
(S. B. No. 1044)

AN ACT
AMENDING SECTION 19-812, IDAHO CODE, RELATING TO TRANSCRIPTION OF PRELIMINARY EXAMINATION BY PROVIDING FOR THE MAINTAINING OF VERBATIM RECORD OF THE PROCEEDINGS AND EVIDENCE AT THE PRELIMINARY
EXAMINATION BY EITHER ELECTRICAL DEVICES OR STENOGRAPHIC MEANS; AND DECLARING AN EMERGENCY.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-812, Idaho Code, be, and the same is hereby amended to read as follows:

19-812. TRANSCRIPT OF PRELIMINARY EXAMINATION. -- In all cases which must afterward be investigated by the grand jury, or prosecuted by information, the preliminary examination must be taken and duly transcribed as herein provided, unless the person charged with the offense shall waive his right to such examination, and the same can not be unreasonably delayed by either party.

A verbatim record of the proceedings and evidence at the preliminary examination before a magistrate shall be maintained either by electrical devices or by stenographic means as the magistrate may direct, but if any party to the action requests stenographic reporting of the proceedings, the reporting shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings.

The opening statements and closing argument of counsel for the parties need not be transcribed and made a part of the transcript unless the transcription of the same is requested in advance by either of such parties.

The transcript of the proceedings and evidence at the preliminary examination shall be certified to as true and correct by the stenographer or by the person designated to transcribe the proceedings from the electrical devices.

The transcript must either be reduced to writing by the magistrate or under his direction or be taken in shorthand by a stenographer and transcribed.

The transcript of the preliminary examination must contain the testimony of each witness and must state the name of the witness, his place of residence, his business or profession. It must contain the questions put to each witness and his answers thereto. If a question be objected to by either party and overruled or the witness declines to answer it, that fact, with the ground on which the question objection was overruled or the answer to the question declined, must be stated and reported in the transcript. The opening statements and closing argument of counsel for the parties need not be transcribed and made a part of the transcript unless the transcription of same is requested in advance by either of such parties.

The transcript must be authenticated as follows:
1. If the testimony of witnesses is taken in writing each answer must be distinctly read to the witness as it is taken down, and must be corrected or added to until it conforms to what he declares is the truth; it must be subscribed and sworn to by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it; or

2. If the transcript of testimony at the preliminary examination is taken by a stenographer in shorthand it shall be transcribed by him and certified to as true and correct; and-

3. Unless certified by the county stenographer, the transcript of the preliminary examination must also be signed and certified as true and correct by the magistrate.

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 March 8, 1971.

CHAPTER 74
(S. B. No. 1057)

AN ACT
RELATING TO COIN OPERATED MACHINES, PROHIBITING THE OPENING OR DAMAGING OF ANY COIN OPERATED MACHINE, PROHIBITING THE POSSESSION OF ANY PRINT, MOLD OR DRAWING OF ANY KEY OR DEVICE SPECIFICALLY DESIGNED TO OPEN A COIN OPERATED MACHINE; PROVIDING THAT THIS ACT SHALL NOT AFFECT CHAPTER 74, LAWS OF 1963; AND PROVIDING PENALTY.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. Any person who without lawful authority, wilfully and wrongfully, opens, removes or damages any parking meter, coin telephone or other vending machine dispensing goods or services, or a part thereof; or possesses a key or device specifically designed to open or break any parking meter, coin telephone or other vending machine dispensing goods or services; or possesses a drawing, print or mold of a key or device specifically designed to open or break any parking meter, coin telephone or other vending machine dispensing goods or services, shall be guilty of a misdemeanor.
SECTION 2. Nothing in this act shall be deemed to repeal, amend, or modify the provisions of Chapter 74, Laws of 1963.

Approved March 8, 1971.

CHAPTER 75
(S. B. No. 1126)

AN ACT
ESTABLISHING AN INCENTIVE SAVINGS AWARD SUGGESTION SYSTEM FOR THE STATE OF IDAHO; CREATING AN INCENTIVE SAVINGS AWARD SUGGESTION SYSTEM BOARD; AUTHORIZING THE ADOPTION OF RULES AND REGULATIONS TO IMPLEMENT AN INCENTIVE SAVINGS AWARD SUGGESTION SYSTEM; AUTHORIZING AWARDS FOR CONCEPTS, SUGGESTIONS OR IDEAS THAT WILL CONSERVE MANHOURS, SUPPLIES, EQUIPMENT, OPERATING COSTS, OR THAT CONTRIBUTE DIRECTLY TO CARRYING OUT THE MISSION OF AGENCIES OF STATE GOVERNMENT; EXEMPTING THE PROVISIONS OF THIS ACT FROM THE PROVISIONS OF CHAPTER 52, TITLE 67, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. It is hereby declared to be the policy of the state of Idaho to further encourage state employees to develop new concepts for the improvement of efficiency and economy in state government through awards for suggestions, concepts and ideas that will directly conserve manhours, supplies, equipment, operating costs, or that contribute directly to carrying out the mission of an agency of state government. The "Incentive Savings Award Suggestion System" which is established pursuant to the terms of this act shall be administered to promote the policies set forth in this section.

SECTION 2. As used in this act, the following terms are defined as hereinafter set forth, unless the context in which such terms are used clearly requires otherwise:

(1) "Board" means the incentive savings award suggestion system board;

(2) "Program" means the program developed by the board under the provisions of this act;
(3) "Secretary" means the secretary of the incentive award suggestions system board;

(4) "Agency" means and includes every state government office, officer, and every department, division, board and commission;

(5) "Classified employee" means any person appointed to or holding a position in any agency of the state of Idaho, which position is subject to the provisions of chapter 53, title 67, Idaho Code.

SECTION 3. There is hereby created an incentive savings award suggestion system to be administered by the incentive savings award suggestion board. The board created by this act shall consist of the legislative auditor, the director of the Idaho personnel commission, and a third member, to be appointed by the governor, for a term of one (1) year from among the classified employees of the state of Idaho who have a minimum of ten (10) years' service with the state. The term of appointment of the classified employee member shall be from July 1 to June 30, and such appointee shall not again be reappointed to the board until at least one (1) term shall have intervened before his reappointment. No agency shall be represented by consecutive appointments of classified employees therein to the board. The director of the Idaho personnel commission shall be chairman of the board and the board may designate its own secretary.

SECTION 4. The board shall meet at least twice annually and at such other times as the chairman may determine. A quorum shall consist of two (2) members of the board, one (1) of whom must be the classified employee member.

SECTION 5. It shall be the duty of the board to administer this act and to promulgate rules and regulations for the conduct of an incentive savings award suggestion system. Such rules and regulations shall include, but are not limited to, the following:

(1) The establishment of a procedure for submission, screening and eligibility of all suggestions, ideas and concepts;

(2) The approval of those suggestions which will produce economies or improvements in the operations of an agency; and

(3) The provision of assistance to agencies in the implementation of ideas, concepts and suggestions purchased by the board.

SECTION 6. Upon approval by the board of a concept, idea or suggestion, submitted to the board pursuant to the rules and regulations adopted by the board, the board may award either a certificate of merit or such other award as may be appropriate to the employee submitting the suggestion.
SECTION 7. All employees of the state of Idaho are eligible to participate in the incentive savings award suggestion system pursuant to the terms of this act, except that award shall not be made for:

(1) Suggestions which represent a part of the normal duties of the employee, or over which the employee has the sole authority to implement the suggestion;

(2) Suggestions by employees whose normal duties are research or planning, unless the subject matter is unrelated to normal work assignments;

(3) Suggestions made by any member of the board, its staff, the secretary, or any member of an agency staff who is assigned to assist the board in its deliberations.

SECTION 8. The provisions of this act are hereby expressly declared to be exempt from the provisions of chapter 52, title 67, Idaho Code.

SECTION 9. This act shall be in full force and effect on and after July 1, 1971.

Approved March 8, 1971.

CHAPTER 76
(S. B. No. 1153)

AN ACT
APPROPRIATING MONEYS OUT OF THE LAVA HOT SPRINGS FOUNDATION FUND TO THE LAVA HOT SPRINGS FOUNDATION FOR THE PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972 AND PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated out of the Lava Hot Springs Foundation Fund the sum of $159,500 to the Lava Hot Springs Foundation for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$ 92,500</td>
</tr>
<tr>
<td>Travel</td>
<td>2,000</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>61,000</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>4,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$159,500</td>
</tr>
</tbody>
</table>

Approved March 8, 1971.
CHAPTER 77
(S. B. No. 1154)

AN ACT

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

SECTION 1. There is hereby appropriated out of the Industrial Administration Fund the sum of $226,723 to the Industrial Accident Board for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$155,228</td>
</tr>
<tr>
<td>Travel</td>
<td>6,830</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>63,665</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>1,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$226,723</td>
</tr>
</tbody>
</table>

SECTION 2. There is hereby appropriated out of the State Insurance Fund the sum of $651,674 to the State Insurance Fund for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$409,074</td>
</tr>
<tr>
<td>Travel</td>
<td>77,600</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>153,400</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>11,600</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$651,674</td>
</tr>
</tbody>
</table>
SECTION 3. There is hereby appropriated out of the Real Estate Fund the sum of $101,500 to the Idaho Real Estate Commission for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$ 48,500</td>
</tr>
<tr>
<td>Travel</td>
<td>15,000</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>36,500</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>1,000</td>
</tr>
<tr>
<td>Refunds</td>
<td>500</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$101,500</td>
</tr>
</tbody>
</table>

Approved March 8, 1971.

CHAPTER 78
(S. B. No. 1158)

AN ACT
APPROPRIATING MONEYS OUT OF THE LIQUOR LAW ENFORCEMENT FUND TO LIQUOR LAW ENFORCEMENT FOR THE PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972, AND PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated out of the Liquor Law Enforcement Fund the sum of $193,269 to Liquor Law Enforcement for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$135,053</td>
</tr>
<tr>
<td>Travel</td>
<td>12,080</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>34,786</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>10,350</td>
</tr>
<tr>
<td>Refunds</td>
<td>1,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$193,269</td>
</tr>
</tbody>
</table>

Approved March 8, 1971.
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CHAPTER 79
(S. B. No. 1159)

AN ACT


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

SECTION 1. There is hereby appropriated out of the Wheat Commission Fund the sum of $300,000 to the Idaho Wheat Commission for the period from July 1, 1971, through June 30, 1972, to be expended as follows:
FOR
Salaries & Wages $ 38,441
Travel Expense 16,750
Other Current Expense 242,309
Capital Outlay 2,000
Refunds 500
TOTAL $300,000

SECTION 2. There is hereby appropriated out of the Bean Commission Fund the sum of $100,000 to the Idaho Bean Commission for the period from July 1, 1971, through June 30, 1972, to be expended as follows:
FOR AMOUNT
Salaries & Wages $ 11,083
Travel 9,500
Other Current Expense 78,417
Refunds 1,000
TOTAL $100,000

SECTION 3. There is hereby appropriated out of the Cherry Commission Fund the sum of $15,500 to the Idaho Cherry Commission for the period from July 1, 1971, through June 30, 1972, to be expended as follows:
FOR AMOUNT
Salaries & Wages $ 1,000
Travel 750
Other Current Expense 13,550
Capital Outlay 100
Refunds 100
TOTAL $ 15,500

SECTION 4. There is hereby appropriated out of the Apple Commission Fund the sum of $18,000 to the Idaho Apple Commission for the period from July 1, 1971, through June 30, 1972, to be expended as follows:
FOR AMOUNT
Salaries & Wages $ 2,000
Travel 800
Other Current Expense 15,000
Capital Outlay 100
Refunds 100
TOTAL $18,000
SECTION 5. There is hereby appropriated out of the Dairy Commission Fund the sum of $321,850 to the Idaho Dairy Commission for the period from July 1, 1971, through June 30, 1972, to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$34,907</td>
</tr>
<tr>
<td>Travel</td>
<td>18,475</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>266,718</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>1,750</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$321,850</td>
</tr>
</tbody>
</table>

SECTION 6. There is hereby appropriated out of the State Brand Inspection Fund the sum of $493,885 to the State Brand Inspector for the period from July 1, 1971, through June 30, 1972, to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$339,735</td>
</tr>
<tr>
<td>Travel</td>
<td>40,000</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>82,150</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>32,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$493,885</td>
</tr>
</tbody>
</table>

Approved March 8, 1971.

CHAPTER 80
(S. B. No. 1098)

AN ACT

AMENDING SECTION 45-615, IDAHO CODE, RELATING TO PROCEEDINGS FOR COLLECTION OF WAGES AND DAMAGES BEFORE THE COMMISSIONER OF LABOR, BY Changing THE PROVISION THAT LIMITS SUCH PROCEEDINGS TO CLAIMS INVOLVING $250.00 OR LESS AND SETTING A NEW LIMIT FOR COLLECTION OF WAGES BY THE COMMISSIONER OF LABOR TO CLAIMS INVOLVING $450.00 OR LESS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. That Section 45-615, Idaho Code, be, and the same is hereby amended to read as follows:

45-615. PROCEEDINGS FOR COLLECTION OF WAGES AND DAMAGES -- $450 LIMIT. -- 1. Claims filed with the commissioner of labor as set forth in this chapter are limited to $250 four hundred fifty dollars ($450) for each employee.

2. Any proceeding by one (1) or more employees to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction, either as individual, class or representative suits.

3. Whenever the commissioner determines that one (1) or more employees have claims for unpaid wages he may, upon the written request of the employee, take an assignment of the claim or claims in trust for such employee or employees, and may maintain any proceeding appropriate to enforce the claim or claims, including additional fixed damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this subsection.

4. Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceedings and the plaintiff, or the commissioner in his behalf, shall be entitled to recover from the defendant, as damages, three (3) times the amount of unpaid wages found due and owing.

5. The commissioner shall attempt for a period of not less than two (2) years, from the date of collection, to make payment of wages collected under this act to the person entitled thereto. Wages collected by the commissioner and remaining unclaimed for a period of more than two (2) years from the date collected shall on June 1st of each year be forfeited and retained in the department's account and used for the administration of this act.

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 March 8, 1971.
AN ACT AMENDING SECTION 49-1102, IDAHO CODE, RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS BY PROVIDING A DIFFERENT PRESUMPTIVE LIMIT OF BLOOD ALCOHOL CONTENT; BY PROVIDING THAT IT SHALL BE UNLAWFUL TO DRIVE A MOTOR VEHICLE UNDER THE INFLUENCE OF ANY COMBINATION OF INTOXICATING LIQUOR AND ANY DRUG; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-1102, Idaho Code, be, and the same is hereby amended to read as follows:

49-1102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OF DRUGS. - (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle within this state.

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time of the alleged offense as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at the time 0.10 per cent (.10%) .08 per cent (.08%) by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
2. If there was at that time more than 0.10 per cent (.10%) .08 per cent (.08%) by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor;
3. Per cent by weight of alcohol in blood shall be based upon grams of alcohol per 100 one hundred (100) cubic centimeters of blood;
4. The foregoing provisions of paragraph (b) shall not be construed as
limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(c) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is a habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of intoxicating liquor and any drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

(d) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by fine of not more than three hundred dollars ($300) or by both such fine and imprisonment. Every person convicted under this section shall serve at least ten (10) days in the county or municipal jail and this sentence shall be mandatory on every judge of every court of the state of Idaho without any right to exercise judicial discretion in said matter, except that the judge may allow said jail sentence to be served within a six (6) week period from the date of conviction in segments of time not less than one (1) day consisting of twenty-four (24) hours at each time. On a second or subsequent conviction he shall be imprisoned in the state penitentiary for not more than five (5) years.

The commissioner shall suspend the Idaho operator's license or permit to drive and any nonresident's driving privileges in the state of Idaho of any person convicted of a violation of this section for a period of ninety (90) days upon the first conviction, six (6) months upon the second conviction occurring within a two (2) year period from the time of the first conviction, and one (1) year suspension upon a third conviction occurring within a three (3) year period of the time from the first conviction.

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 March 8, 1971.
CHAPTER 82
(H. B. No. 132)

AN ACT
AMENDING SECTION 59-103, IDAHO CODE, BY STRIKING THE RESIDENTIAL REQUIREMENT OF CLERK OF THE SUPREME COURT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 59-103, Idaho Code, be, and the same is hereby amended to read as follows:

59-103. RESIDENCE OF CERTAIN OFFICERS. - The following officers must reside within the County of Ada and keep their offices in Boise City:

The Governor.
Secretary of State.
Auditor.
Treasurer.
Attorney General.
Superintendent of Public Instruction.
Clerk of the Supreme Court.

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 March 8, 1971.

CHAPTER 83
(H. B. No. 165)

AN ACT
AMENDING SECTION 54-902, IDAHO CODE, TO PERMIT THE STATE BOARD OF DENTISTRY TO SPECIFY OTHER DENTAL SERVICES WHICH A DENTAL HYGIENIST MAY PERFORM, BUT PROHIBITING CERTAIN DENTAL PRACTICES RELATING TO DIAGNOSIS AND TREATMENT PLANNING, PRESCRIPTION OF DRUGS AND LABORATORY WORK, SURGICAL PROCEDURES, AND THE TAKING OF FINAL IMPRESSIONS OF THE TEETH OR
JAW; AMENDING SECTION 54-903, IDAHO CODE, TO ADD A NEW SUBSECTION (h) DEFINING A DENTAL ASSISTANT; AMENDING SECTION 54-904, IDAHO CODE, TO MAKE IT UNLAWFUL AND A MISDEMEANOR FOR A DENTAL ASSISTANT TO PERFORM DENTAL SERVICES PERMITTED BY CHAPTER 9, TITLE 54, IDAHO CODE, AND THE REGULATIONS THEREUNDER ESTABLISHED EXCEPT IN THE OFFICE OF AND UNDER THE DIRECT SUPERVISION OF A DENTIST OR IN A PUBLIC INSTITUTION OR PUBLIC OR PAROCHIAL SCHOOLS UNDER THE GENERAL SUPERVISION OF A DENTIST; AMENDING SUBSECTION (h) OF SECTION 54-924, IDAHO CODE, TO ADD TO SUCH SUBSECTION PROVISIONS THAT A DENTIST MAY ALLOW A DENTAL ASSISTANT TO PERFORM DENTAL SERVICES SPECIFIED BY THE STATE BOARD OF DENTISTRY IN ITS ADOPTED RULES AND REGULATIONS, BUT PROVIDING THAT A DENTAL ASSISTANT MAY NOT BE AUTHORIZED TO PERFORM ANY SERVICE WHICH A DENTAL HYGIENIST IS PROHIBITED FROM PERFORMING BY SECTION 54-902, IDAHO CODE, AND REGULATIONS ADOPTED THEREUNDER, REMOVE CALCULUS DEPOSITS FROM NATURAL TOOTH SURFACES AND TO PERFORM SOFT TISSUE CURETTAGE PROCEDURES, ADMINISTRATION OF GENERAL OR LOCAL ANESTHETIC IN CONNECTION WITH A DENTAL OPERATION, CONDUCT ORAL EXAMINATIONS, INTERPRET RADIOGRAPHS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 54-902, Idaho Code, be, and the same is hereby amended to read as follows:

54-902. DEFINITION — PRACTICE OF DENTAL HYGIENE. — The practice of dental hygiene is the doing by one (1) person for a direct or indirect consideration of one (1) or more of the following with respect to the teeth or dental health of another person, namely, cleaning, polishing, removing stains or concretions; administering prescribed medicaments; applying preventive agents; performing nonsurgical, clinical and laboratory oral diagnosis tests for interpretation by a dentist; preparation of preliminary records of oral conditions for interpretation by a dentist; and such other dental services as may be specified by the board from time to time in its adopted rules and regulations, provided, however, a dental hygienist shall not be authorized to perform the following:
(1) The diagnosis of oral conditions and treatment planning therefor;
(2) The prescription of drugs and laboratory work authorizations;
(3) The performance of surgical procedures on hard and soft tissue; or
(4) The taking of any final impressions of the teeth or jaws or the relationship of the teeth or jaws for the purpose of fabricating any intra-oral restoration, appliance or prosthesis.

SECTION 2. That Section 54-903, Idaho Code, be, and the same is hereby amended to read as follows:

54-903. DEFINITIONS — DENTIST — DENTAL HYGIENIST — GENERAL — DENTAL ASSISTANT. — (a) A dentist is a person both qualified and annually licensed by the laws of Idaho to practice dentistry.

(b) A dental hygienist is a person both qualified and annually licensed by the laws of Idaho to practice dental hygiene.

(c) “Department”, as used in this act, shall mean the department of law enforcement of the state of Idaho.

(d) “Commissioner”, as used in this act, shall mean the commissioner of law enforcement of the state of Idaho.

(e) “Board”, as used in this act, shall mean the state board of dentistry created by section 54-907, Idaho Code.

(f) “Association”, as used in this act, shall mean the Idaho state dental association.

(g) The word “person”, the word “he”, and the word “his”, wherever used in this act, shall be taken to include both male and female persons unless a contrary intention is made manifest, provided that none of these words shall be taken to mean any other than a natural person.

(h) A dental assistant is a person who need not be licensed under this chapter, but who is regularly employed by a dentist at his office, who works under such dentist’s direct supervision and is adequately trained and qualified according to standards to be established by the board to perform the dental services permitted to be performed by such assistants by this chapter and applicable rules and regulations of the board.

SECTION 3. That Section 54-904, Idaho Code, be, and the same is hereby amended to read as follows:

54-904. DENTAL HYGIENIST AND DENTAL ASSISTANT — PRACTICE. — It shall be unlawful and constitute a misdemeanor for a dental hygienist or dental assistant to practice dental hygiene, perform any dental service permitted to be performed by such persons by this chapter or applicable rules and regulations of the board except in the office of and
under the direct supervision, of a licensed dentist, or in a public institution
or public or parochial schools under the general direction or supervision of a
licensed dentist.

SECTION 4. That Section 54-924, Idaho Code, be, and the same is
hereby amended to read as follows:

54-924. OTHER GROUNDS OF REVOCATION OR SUSPENSION
OF DENTISTS — PROBATION AGREEMENTS. — The certificate or other
evidence of qualification, and the right to practice dentistry and the annual
license of any dentist may be revoked, or suspended by the board upon
proceedings as in this act provided in the event such dentist shall:

(a) Intentionally misstate, or fail fully to disclose, a fact material to
determination of fitness and qualification in an application for examination
to practice dentistry; or cheat in an examination to practice dentistry; or
procure a certificate or finding of qualification to practice dentistry or an
annual license therefor by false, fraudulent or deceitful means or in any
other name than his own true name; or

(b) Practice dentistry under any name other than his own true name
except as authorized by the provisions of the professional service
corporation act; or

(c) Practice or in any manner or by any means or at any place hold out
or represent himself as practicing dentistry in or under the name of, or as a
member, representative, agent or employee of, or in connection with, any
company, association, or corporation, or under any trade, fictitious or
business name except as authorized by the provisions of the professional
service corporation act; or

(d) Make, or cause to be made, or assist in making, any fraudulent,
false, misleading or puffing statement as to his own, or an employee's,
associate's, or other dentist's or dental hygienist's skill or lack of skill, or
method of practice; or claim to practice dentistry without causing pain; or
claim superiority over other dentists; or publish, advertise, or circulate
reports, letters, certificates, indorsements, or evidence of cures or corrections
of dental conditions by such dentist, his employee or associate by reason of
his or their skill, experience, or ability or of his or their use of any system,
method, technique, device, drug, medicine, material, manipulation or
machine; or advertise the use of, or use, any system, method, technique,
device, drug, medicine, material or machine, which is either falsely advertised
or misnamed; or advertise as giving, or give, free dental services or
examination as an inducement to secure dental patronage; or advertise fees
or prices for services or materials or devices, or combination of any thereof;
(e) Employ "cappers" or "steerers" to obtain patronage; or call or seek to call, the attention of the public to him, his office, his skill, or his practice, by public exhibition, use, reproduction, or representation of specimens or samples, of dental work, or by demonstrations in public; provided, however, that this shall not apply to bona fide teaching in dental or dental hygiene schools, or demonstrations or exhibitions before meetings of other dentists or dental hygienists; or

(f) Use intoxicants or drugs to such a degree as to render him unfit to practice; or be guilty of gross malpractice; or be guilty of unprofessional or flagrant immoral conduct; or

(g) Advertise in a flamboyant manner or in such way as to deceive or defraud, or probably deceive or defraud, the public or patrons; or

(h) Employ or permit any person not a dentist to practice dentistry, or any person not a dentist or dental hygienist to practice dental hygiene, in his office or under his control or direction; except that a dentist may allow a dental assistant to perform any dental services as may be specified by the board from time to time in its adopted rules and regulations; provided, however, a dental assistant may not be authorized to perform any of the following:

1. Any service which a dental hygienist is prohibited from performing by section 54-902, Idaho Code, or by any rule or regulation adopted by the board;

2. Removal of calculus deposits from natural tooth surfaces and the performance of soft tissue curettage procedures;

3. Administration of general or injected local anesthetic of any nature in connection with a dental operation;

4. Conducting oral examination for the purpose of charting existing conditions; or

5. Interpreting radiographs;

(i) Fail, neglect or refuse to keep his office or equipment, or otherwise conduct his work, in a thoroughly clean and sanitary condition; or

(j) Violate any other provisions of this act or rules or regulations lawfully promulgated by the board.

The board shall specifically set forth in the order of revocation or suspension the period of time for which such license shall be revoked or suspended and in lieu of revocation, the board may enter into a consent order providing for a probation period which shall be for a term of not more than three (3) years and shall be in lieu of other disciplinary action.
SECTION 5. 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 March 8, 1971.

CHAPTER 84
(H. B. No. 173)

AN ACT
AMENDING SECTION 1-1607, IDAHO CODE, RELATING TO THE ENUMERATION OF NONJUDICIAL DAYS, BY PROVIDING THAT NO COURT SHALL BE OPEN OR TRANSACT BUSINESS ON ANY DAY SPECIFIED IN SECTION 73-108, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1-1607, Idaho Code, be, and the same is hereby amended to read as follows:

1-1607. NONJUDICIAL DAYS. — No court can be opened nor can any judicial business be transacted on Sunday, on the first day of January, on February 22, on May 30, on the fourth day of July, on the first Monday in September, on November 11, on Christmas or Thanksgiving Day, any day enumerated in section 73-108, Idaho Code, or on every day appointed by the President of the United States, or by the governor of this state, for a public fast, thanksgiving, or holiday, or on a day on which the general election is held, except for the following purposes:

1. To give, upon their request, instructions to a jury when deliberating on their verdict.

2. To receive a verdict or discharge a jury.

3. For the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature: provided, that in civil causes orders of arrest may be made and executed; writs of attachment, executions, injunctions and writs of prohibition may be issued and served; proceedings to recover possession of personal property may be had; and suits for the purpose of obtaining any such writs and proceedings may be instituted on any day.

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 March 8, 1971.

CHAPTER 85
(H. B. No. 207)

AN ACT
RELATING TO THE PRACTICE OF NURSING; AMENDING SECTION 54-1413, IDAHO CODE, AS AMENDED BY CHAPTER 17, LAWS OF 1971, TO PROVIDE THAT MEDICAL THERAPEUTIC MEASURES SHALL NOT BE PRESCRIBED BY NURSES EXCEPT BY JOINT RULE OR REGULATION.

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

SECTION 1. That Section 54-1413, Idaho Code, as amended by Chapter 17, Laws of 1971, be, and the same is hereby amended to read as follows:

54-1413. DEFINITIONS. — As used in this act:
   a. Commissioner means commissioner of law enforcement.
   b. Department means department of law enforcement.
   c. Board means the board of nursing.
   d. Council means the advisory council of licensed practical nurses.
   e. Practice of nursing:

The practice of professional nursing means the performance for compensation of any act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a licensed physician or dentist; requiring substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical and social science. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of medical therapeutic or corrective measures, except as may be authorized by rules and regulations jointly promulgated by the Idaho state board of medicine and the Idaho board of nursing which shall be implemented by the Idaho board of nursing.
The practice of practical nursing means the performance for compensation of selected acts in the care of the ill, injured, or infirm under the direction of a registered professional nurse or a licensed physician or a licensed dentist; and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing.

f. Nursing school means a course of training designed to prepare and represented as preparing persons for licensure under this act as a registered nurse.

g. Course for the training of practical nurses means a course of training designed to prepare and represented as preparing persons for licensure under this act as a licensed practical nurse.

Approved March 8, 1971.

CHAPTER 86
(H. B. No. 111)

AN ACT
AMENDING SECTION 49-835, IDAHO CODE, TO DEFINE EXCESSIVE OR UNUSUAL NOISE AND PROVIDE FOR THE MAXIMUM ACCEPTABLE DECIBEL RATING; TO PROHIBIT MODIFICATION OF MUFFLERS AND TO PROVIDE FOR PRIMA FACIE EVIDENCE.

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

SECTION 1. That Section 49-835, Idaho Code, be, and the same is hereby amended to read as follows:

49-835. MUFFLERS, PREVENTION OF NOISE. (a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-out, bypass, or similar device upon a motor vehicle on a highway.

"Excessive or unusual noise" as used in this section includes, but is not limited to, any sound made by a passenger motor vehicle or a motorcycle at any time under any condition of grade, speed, acceleration or deceleration, which exceeds ninety-two (92) decibels, or, any lower decibel level that is fixed by law or the rules and regulations regularly adopted by the Idaho air pollution control commission, on the A scale of a general radio company No. 1551-B sound level meter, or equivalent, stationed at a distance of not less
than twenty (20) feet to the side of such vehicle or motorcycle as such
vehicle or motorcycle passes the soundmeter or is stationed not less than
twenty (20) feet from a stationary motor or engine.

(b) The engine and power mechanism of every motor vehicle shall be
so equipped and adjusted as to prevent the escape of excessive fumes or
smoke.

(c) No person shall modify the exhaust system of a motor vehicle or a
motorcycle in a manner which will amplify or increase the noise of such
vehicle or motorcycle above that emitted by the muffler originally installed
on the vehicle by the manufacturer.

(d) A showing that the sound made by a passenger motor vehicle or
motorcycle exceeds the maximum allowable decibel level shall be prima facie
evidence of a violation of subdivision (a) of this section.

Approved March 8, 1971.

CHAPTER 87
(H.B. No. 154)

AN ACT
REPEALING CHAPTER 16, TITLE 63, IDAHO CODE, RELATING TO
ASSESSMENT OF MIGRATORY LIVESTOCK.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 16, Title 63, Idaho Code, be, and the same
is hereby repealed.

Approved March 8, 1971.

CHAPTER 88
(H. B. No. 175)

AN ACT
RELATING TO BOND ELECTIONS TO PROVIDE AIR NAVIGATION
FACILITIES; AMENDING SECTION 21-401, IDAHO CODE, BY
REMOVING THE PROPERTY OWNERSHIP QUALIFICATIONS
FROM THE ELIGIBILITY REQUIREMENTS TO VOTE; AND
DECLARING AN EMERGENCY.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 21-401, Idaho Code, be, and the same is hereby amended to read as follows:

21-401. AUTHORITY TO PROVIDE FACILITIES — EXPENSE — ISSUANCE OF BONDS — DUTIES OF COMMISSIONERS AND COUNCILMEN — RESTRICTION ON LEASE OF FACILITIES. — Counties, highway districts, and cities and villages are hereby authorized to acquire by purchase, lease, condemnation, or otherwise, take over and hold lands not exceeding in area one thousand two hundred eighty (1280) acres either wholly or partly within or without the boundaries or corporate limits of such counties, highway districts, or cities or villages, or wholly or partly within or without the state of Idaho, for the purpose of constructing and maintaining aviation fields, airports, hangars and other air navigation facilities; to provide equipment necessary or incidental to the maintenance and operation of such aviation fields or airports; to maintain, operate and manage such aviation fields, airports and grounds and prescribe rules and regulations for the maintenance, operation and management thereof, and fix fees and rentals to be charged for the use of the same or any part thereof; to survey, plat, map, grade, ornament and otherwise improve such lands and all appurtenances thereto, whether owned and operated or owned or leased by such counties, highway districts, or cities or villages, and all approaches and avenues leading to or adjacent thereto; to lease for aviation purposes or for any purposes connected therewith and incidental thereto and for such commercial purposes as the governing bodies of such counties, highway districts, and cities and villages may determine upon all or any part of the land or lands so required, under such regulations and upon such terms and conditions as shall be established by such governing bodies, and not subject to the limitation as to length of term prescribed in section 31-836, Idaho Code, as amended; to construct, operate and maintain hangars, buildings and equipment necessary or convenient to the maintenance and operation of aviation fields or airports.

Counties, highway districts, and cities and villages are hereby empowered to provide for all costs and expenses necessary or incident to the exercise of the foregoing powers or the attainment of the foregoing objects or any of them, out of the general funds or out of any of the funds made available for such purposes, of such counties, highway districts, and cities and villages, or to issue bonds pursuant to law for the payment of any or all of such costs and expenses except for the maintenance and operation of such
aviation fields or airports.; Provided provided, that no bonds shall be issued for the purposes aforesaid unless and until authorized by a vote of two thirds (2/3) of the qualified electors of the county, highway district or municipality, voting at such election, who are resident taxpayers thereof, and a taxpayer within the meaning of this act is a person whose name appears on the tax rolls of the county and is there assessed with unexempt real or personal property owned and subject to taxation within the boundaries of such county, highway district or municipality, or is the wife or husband of such person. Nothing contained in this act shall be construed to increase the maximum of any tax levies for counties, highway districts, or cities or villages.

The boards of county commissioners of their respective counties, the highway commissioners of their respective highway districts, and the councilmen of their respective cities, and the boards of trustees of their respective villages, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to carry into full force and effect all of the provisions of this law.

Such aviation fields or airports shall in no case be leased to any person, association or corporation under such terms or conditions as to give such person, association or corporation, the exclusive right to the use of such aviation fields or airports.

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 March 8, 1971.

CHAPTER 89
(S. B. No. 1160)

AN ACT
AMENDING SECTION 67-412, IDAHO CODE, TO PROVIDE THAT EACH MEMBER OF THE LEGISLATURE SHALL RECEIVE THE SUM OF TWENTY-FIVE DOLLARS PER DAY DURING ANY SESSION OF THE LEGISLATURE FOR BOARD, NECESSARY COMMITTEE EXPENSES AND THE NECESSARY EXPENSES OF MAINTAINING THE OFFICE OF A LEGISLATOR, BY REMOVING RESTRICTIONS
LIMITING SUCH ALLOWANCE TO A SPECIFIED NUMBER OF DAYS IN EACH REGULAR SESSION, BY REMOVING RESTRICTIONS CONCERNING REIMBURSEMENT OF ACTUAL EXPENSES NECESSARILY INCURRED IN ATTENDING MEETINGS DURING THE INTERIM BETWEEN SESSIONS AND SUBSTITUTING THEREFOR PROVISIONS TO PROVIDE AN EXPENSE ALLOWANCE FOR MAINTAINING A SECOND RESIDENCE IN ADA COUNTY DURING ANY LEGISLATIVE SESSION, TO PROVIDE THAT THE PRESIDENT OF THE SENATE SHALL RECEIVE AN ALLOWANCE, TO PROVIDE THAT A MILEAGE ALLOWANCE MAY BE PAID INSTEAD OF THE ALLOWANCE FOR MAINTAINING A SECOND RESIDENCE, TO PROVIDE THAT MEMBERS MAY BE REIMBURSED FOR NOT MORE THAN FOUR VISITS TO THE HOME LEGISLATIVE DISTRICT DURING EACH REGULAR LEGISLATIVE SESSION, TO PROVIDE THAT EACH MEMBER SHALL RECEIVE AN EXPENSE ALLOWANCE OF THREE DOLLARS AND FIFTY CENTS PER DAY TO MAINTAIN THE OFFICE OF LEGISLATOR WHILE NOT IN SESSION, AND TO PROVIDE THAT MEMBERS SHALL RECEIVE THE SAME PER DIEM AND EXPENSE ALLOWANCES FOR ATTENDING MEETINGS OR PERFORMING SERVICES PREVIOUSLY AUTHORIZED BY THE LEGISLATURE DURING THE INTERIM BETWEEN SESSIONS AS IS PROVIDED FOR MEMBERS OF THE LEGISLATIVE COUNCIL; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

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

SECTION 1. That Section 67-412, Idaho Code, be, and the same is hereby amended to read as follows:

67-412. ALLOWANCE FOR MEMBERS. — (1) From and after December 1, 1970, Each each member of the legislature of the state of Idaho, while serving during any session of the legislature and the lieutenant governor while performing his duties as president of the senate during any session of the legislature, shall receive the sum of $25.00 twenty-five dollars ($25) per day as expenses for board, lodging and necessary committee expenses, and the necessary expenses of maintaining the office of a legislator while serving during the first session for 60 days only and during the second session for 30 days only.
(2) Members of the legislature shall be reimbursed for actual expenses necessarily incurred in attending meetings, authorized specifically and in advance by the legislature, held during the interim between legislative sessions, all such reimbursements to be made only for such expenses which are substantiated by a paid voucher or receipt.

(2) Each member of the legislature of the state of Idaho, who maintains a second residence in Ada County during any legislative session for the purpose of attending any session of the legislature shall receive the additional sum of ten dollars ($10) per day as expenses for lodging and other related expenses incurred in the maintaining of such second residence while serving during any session of the legislature, including each day after December 1, 1970. Each legislator maintaining such a second residence shall certify such fact to the presiding officer of the house in which he serves, and upon such certification shall be entitled to receive the expense payment herein provided in regular installments along with the other expenses provided for in this section. For the purposes of this section, a member of the legislature shall be deemed to maintain a second residence in Ada County if such person regularly resides within another county of the state of Idaho and also maintains a residence within Ada County for the purpose of attending any legislative session. The second residence may be in apartments, hotels, motels, homes, or other customary places of abode. The president of the senate, in lieu of such compensation provided in subsection (2), shall receive as actual and additional expense the sum of ten dollars ($10) per day.

(3) Each member of the legislature of the state of Idaho who does not maintain a second residence in Ada County during any legislative session, but who commutes to the legislative sessions from his home, shall be reimbursed for actual travel expenses necessarily incurred in traveling to and from the legislature at the rate of ten cents ($0.10) per mile, not to exceed one (1) round trip per day and not to exceed ten dollars ($10) total compensation per day, during each day of the legislative session, including each day after December 1, 1970.

(4) The legislature of the state of Idaho further finds and declares that in the discharge of their official duties it is important that legislators return to their legislative districts on occasion during the term of each legislative session to confer and consult with their constituents concerning pending legislation. Therefore, commencing January 11, 1971, in addition to the travel expenses allowed in section 23, article 3 of the Idaho constitution, each member of the legislature shall be reimbursed for actual expenses
necessarily incurred in travel to and from his home legislative district on four
(4) occasions during each regular legislative session. Reimbursement shall be
upon voucher submitted in the usual form.

(5) The legislature of the state of Idaho finds and declares that to
enable the legislature to carry out its constitutional duties and to function
responsibly and effectively as an independent branch of state government, its
members are required during periods when the legislature is not in session, to
meet and correspond with officials of the departments and agencies of the
executive and judicial branches of state government and local governments as
well as individual constituents and groups of constituents concerning state
and area problems and concerns, proposed legislation, existing laws, and to
study and prepare proposed legislation. To offset the expense incurred in
performing such services and maintaining the office of legislator, each
member of the forty-first legislature of the state of Idaho, and each member
of subsequent legislatures, shall receive for legislative expenses and for the
expense of maintaining the office of legislator while the legislature is not in
session, the sum of three dollars and fifty cents ($3.50) per day during each
day the legislature is not in session. This expense allowance shall be paid in
regular installments as determined by the state auditor and shall be in
addition to all other compensation, either as per diem or expense, paid to
any member of the legislature under the previous subsections or as an officer
or member of any council, board, commission or other agency or
instrumentality of the state of Idaho.

(6) Members of the legislature shall receive the same per diem
allowances and be reimbursed for actual expenses necessarily incurred in
attending meetings or performing services previously authorized by the
legislature and held during the interim between legislative sessions in the
same manner and in the same amounts as is provided for members of the
legislative council, including each day so spent after December 1, 1970.

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, and retroactive to December 1, 1970.

Approved March 9, 1971.
CHAPTER 90
(H. B. 208)

AN ACT
RELATING TO PHYSICAL THERAPISTS; AMENDING SECTION 54-2207, IDAHO CODE, BY STRIKING THE REFERENCE TO APPLICATION FOR REGISTRATION WITHOUT EXAMINATION; AMENDING SECTION 54-2211, IDAHO CODE, TO INCREASE THE MAXIMUM FEE FOR DELAYED RENEWAL FROM $25 TO $50; AMENDING SECTION 54-2212, IDAHO CODE, TO PROVIDE FOR A MINIMUM AND MAXIMUM FEE FOR REGISTRATION AND RENEWAL AND THAT THE EXACT AMOUNT SHALL BE FIXED BY THE BOARD.

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

SECTION 1. That Section 54-2207, Idaho Code, be, and the same is hereby amended to read as follows:

54-2207. APPLICATIONS. — Applications for registration shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's address, education and a detail summary of any other qualifications deemed relevant to registration; and applicant shall furnish not less than three (3) references to persons having personal knowledge of applicant's moral character; and if application is for registration without examination, such references shall also have personal knowledge of applicant's experience as a physical therapist.

SECTION 2. That Section 54-2211, Idaho Code, be, and the same is hereby amended to read as follows:

54-2211. EXPIRATIONS AND RENEWALS. — Certificates of registration shall expire on the 30th day of June following their issuance or renewal and shall become invalid after that date unless renewed. The failure of any registrant to renew his certificate annually before July 1st as required herein shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after June 30th, shall be increased 20% for each month or fraction of a month that payment of renewal is delayed; provided that the maximum fee for delayed renewal shall not exceed the sum of twenty-five ($25.00) fifty dollars ($50.00).

SECTION 3. That Section 54-2212, Idaho Code, be, and the same is hereby amended to read as follows:
54-2212. REGISTRATION AND RENEWAL FEES. ... The registration fee shall be not less than twenty-five dollars ($25.00) nor more than thirty-five dollars ($35.00), which fee must accompany the application. Renewal fees shall be not less than ten dollars ($10.00) nor more than thirty dollars ($30.00), and must be paid on or before the expiration date of the certificate. The amount of said fees shall be fixed by the board. All fees shall be transmitted to the state treasurer for credit to the state board of medicine fund.

Approved March 11, 1971.

CHAPTER 91
(H. 67)

AN ACT
AMENDING SECTION 45-501, IDAHO CODE, RELATING TO LIENS OF MECHANICS AND MATERIALMEN, BY PROVIDING FOR IMPOSITION OF LIENS BY PROFESSIONAL ENGINEERS AND LICENSED SURVEYORS IN THE SAME MANNER AS MECHANICS' AND MATERIALMEN'S LIENS; AMENDING SECTION 45-504, IDAHO CODE, RELATING TO LIENS OF PERSONS IMPROVING LOTS IN AN INCORPORATED CITY OR TOWN, BY PROVIDING FOR IMPOSITION OF SUCH LIENS FOR SURVEYS; AMENDING SECTION 45-505, IDAHO CODE, RELATING TO IDENTIFICATION OF THE PROPERTY SUBJECT TO MECHANICS' AND MATERIALMEN'S LIENS, BY EXTENDING SUCH IDENTIFICATION TO PROPERTY SUBJECT TO LIENS FOR PROFESSIONAL SERVICES; AMENDING SECTION 45-506, IDAHO CODE, RELATING TO THE PREFERENCE OF MECHANICS' AND MATERIALMEN'S LIENS OVER OTHER ENCUMBRANCES, BY EXTENDING SUCH PREFERENCE TO LIENS FOR PROFESSIONAL SERVICES; AMENDING SECTION 45-507, IDAHO CODE, RELATING TO THE MANNER BY WHICH MECHANICS' AND MATERIALMEN'S LIENS ARE CLAIMED, BY PROVIDING THE METHOD FOR CLAIMING A LIEN FOR PROFESSIONAL SERVICES; AND AMENDING SECTION 45-512, IDAHO CODE, RELATING TO PRIORITIES AS BETWEEN LIENS OF LABORERS,
MATERIALMEN, SUBCONTRACTORS AND ORIGINAL CONTRACTORS, BY ADDING THERETO A PROVISION ESTABLISHING THE PRIORITY OF LIENS OF PROFESSIONAL ENGINEERS AND LICENSED SURVEYORS.

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

SECTION 1. That Section 45-501, Idaho Code, be, and the same is hereby amended to read as follows:

45-501. RIGHT TO LIEN. — Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter: provided, that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter.

SECTION 2. That Section 45-504, Idaho Code, be, and the same is hereby amended to read as follows:

45-504. LIEN FOR IMPROVING LOTS. — Any person who, at the request of the owner of any lot in any incorporated city or town, surveys, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done or material furnished.

SECTION 3. That Section 45-505, Idaho Code, be, and the same is hereby amended to read as follows:

45-505. LAND SUBJECT TO LIEN. — The land upon which or in connection with which any professional services are performed or any
building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the furnishing of professional services or other work or of the furnishing of the material for the same, the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, but if such person owns less than a fee simple estate in such land, then only his interest therein is subject to such lien.

SECTION 4. That Section 45-506, Idaho Code, be, and the same is hereby amended to read as follows:

45-506. LIENS PREFERRED CLAIMS. — The liens provided for in this chapter are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, or materials or professional services were commenced to be furnished; also to any lien, mortgage, or other encumbrance of which the lien holder had no notice, and which was unrecorded at the time the building, improvement or structure was commenced, work done, or materials or professional services were commenced to be furnished.

SECTION 5. That Section 45-507, Idaho Code, be, and the same is hereby amended to read as follows:

45-507. CLAIM OF LIEN. — Every original contractor, professional engineer or licensed surveyor claiming the benefit of this chapter must, within ninety (90) days, and every other person must, within sixty (60) days, after the completion of any building, improvement or structure, or after the completion of the alteration or repair thereof, or in case he cease to labor or perform professional services thereon before the completion thereof, then after he so ceases to labor or to perform professional services or after he has ceased to labor or to perform professional services thereon for any cause, or after he has ceased to furnish materials therefor, or after the performance of any labor or professional services in a mine or mining claim, file for record with the county recorder for the county in which such property or some part thereof is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner, or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a
description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.

SECTION 6. That Section 45-512, Idaho Code, be, and the same is hereby amended to read as follows:

45-512. JUDGMENT TO DECLARE PRIORITY. — In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien or class of liens which shall be in the following order:

1. All laborers, other than contractors or subcontractors.
2. All materialmen, other than contractors or subcontractors.
3. Subcontractors.
4. The original contractor.
5. All professional engineers and licensed surveyors.

And in case the proceeds of sale under this chapter shall be insufficient to pay all lienholders under it:

1. The liens of all laborers, other than the original contractor and subcontractor, shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

2. The lien of materialmen, other than the original contractor or subcontractor, shall be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

3. Out of the remainder, if any, the subcontractors shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid pro rata to the original contractor and the professional engineers and licensed surveyors; and each claimant shall be entitled to execution for any balance due him after such distribution; such execution to be issued by the clerk of the court upon demand, at the return of the sheriff or other officer making the sale, showing such balance due.

Approved March 11, 1971.

CHAPTER 92
(H. B. 229)

AN ACT
APPROPRIATING MONEYS OUT OF THE STATE BOARD OF MEDICINE FUND TO THE STATE BOARD OF MEDICINE FOR
THE PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972, AND
PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE
APPROPRIATION; APPROPRIATING MONEYS OUT OF THE
STATE BOARD OF NURSING FUND TO THE STATE BOARD OF
NURSING FOR THE PERIOD FROM JULY 1, 1971 THROUGH
JUNE 30, 1972, AND PRESCRIBING EXPENDITURE
CLASSIFICATIONS FOR THE APPROPRIATION; APPROPRIATING
MONEYS OUT OF THE STATE CEMETERY BOARD FUND TO THE
STATE CEMETERY BOARD FOR THE PERIOD FROM JULY 1,
1971 THROUGH JUNE 30, 1972, AND PRESCRIBING EXPENDITURE
CLASSIFICATIONS FOR THE APPROPRIATION; APPROPRIATING
MONEYS OUT OF THE STATE BOARD OF
DENTISTRY FUND TO THE STATE BOARD OF DENTISTRY FOR
THE PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972, AND
PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE
APPROPRIATION; APPROPRIATING MONEYS OUT OF THE
STATE ELECTRICAL BOARD ACCOUNT TO THE STATE
ELECTRICAL BOARD FOR THE PERIOD FROM JULY 1, 1971
THROUGH JUNE 30, 1972, AND PRESCRIBING EXPENDITURE
CLASSIFICATIONS FOR THE APPROPRIATION; APPROPRIATING
MONEYS FROM THE PROFESSIONAL ENGINEERS FUND TO THE
STATE BOARD OF ENGINEERING EXAMINERS FOR THE
PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972, AND
PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE
APPROPRIATION; APPROPRIATING MONEYS FROM THE
OCCUPATIONAL LICENSE BUREAU FUND TO THE
OCCUPATIONAL LICENSE BUREAU FOR THE PERIOD FROM
JULY 1, 1971 THROUGH JUNE 30, 1972, AND PRESCRIBING
EXPENDITURE CLASSIFICATIONS FOR THE APPO
APPROPRIATION; APPROPRIATING MONEYS FROM THE STATE BOARD OF ACCOUNTANCY FUND TO THE STATE BOARD OF ACCOUNTANCY FOR THE PERIOD FROM JULY 1, 1971 THROUGH JUNE 30, 1972, AND PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated out of the State Board of Medicine Fund the sum of $41,955 to the State Board of Medicine for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$28,420</td>
</tr>
<tr>
<td>Travel</td>
<td>5,445</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>6,190</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>1,900</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$41,955</strong></td>
</tr>
</tbody>
</table>

SECTION 2. There is hereby appropriated out of the State Board of Nursing Fund the sum of $84,444 to the State Board of Nursing for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$47,549</td>
</tr>
<tr>
<td>Travel</td>
<td>7,100</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>26,795</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>2,000</td>
</tr>
<tr>
<td>Refunds</td>
<td>1,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$84,444</strong></td>
</tr>
</tbody>
</table>

SECTION 3. There is hereby appropriated out of the State Cemetery Board Fund the sum of $2,700 to the State Cemetery Board for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$2,700</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$2,700</strong></td>
</tr>
</tbody>
</table>

SECTION 4. There is hereby appropriated out of the State Board of Dentistry Fund the sum of $25,464 to the State Board of Dentistry for the period from July 1, 1971 through June 30, 1972 to be expended as follows:
## IDAHO SESSION LAWS C. 92 '71

**FOR**

<table>
<thead>
<tr>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages $13,900</td>
</tr>
<tr>
<td>Travel  2,645</td>
</tr>
<tr>
<td>Other Current Expense 8,219</td>
</tr>
<tr>
<td>Capital Outlay 600</td>
</tr>
<tr>
<td>Refunds 100</td>
</tr>
<tr>
<td><strong>TOTAL $25,464</strong></td>
</tr>
</tbody>
</table>

**SECTION 5.** There is hereby appropriated out of the State Electrical Board Account the sum of $263,997 to the State Electrical Board for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages $167,986</td>
</tr>
<tr>
<td>Travel  51,097</td>
</tr>
<tr>
<td>Other Current Expense 43,514</td>
</tr>
<tr>
<td>Capital Outlay 600</td>
</tr>
<tr>
<td>Refunds 800</td>
</tr>
<tr>
<td><strong>TOTAL $263,997</strong></td>
</tr>
</tbody>
</table>

**SECTION 6.** There is hereby appropriated out of the Professional Engineers Fund the sum of $37,302 to the State Board of Engineering Examiners for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages $20,000</td>
</tr>
<tr>
<td>Travel  3,300</td>
</tr>
<tr>
<td>Other Current Expense 13,552</td>
</tr>
<tr>
<td>Capital Outlay 400</td>
</tr>
<tr>
<td>Refunds 50</td>
</tr>
<tr>
<td><strong>TOTAL $37,302</strong></td>
</tr>
</tbody>
</table>

**SECTION 7.** There is hereby appropriated out of the Occupational License Bureau Fund the sum of $136,954 to the Occupational License Bureau for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages $76,722</td>
</tr>
<tr>
<td>Travel  24,407</td>
</tr>
<tr>
<td>Other Current Expense 33,825</td>
</tr>
<tr>
<td>Capital Outlay 1,800</td>
</tr>
<tr>
<td>Refunds 200</td>
</tr>
<tr>
<td><strong>TOTAL $136,954</strong></td>
</tr>
</tbody>
</table>
SECTION 8. There is hereby appropriated out of the State Plumbing Board Fund the sum of $109,877 to the State Plumbing Board for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$71,412</td>
</tr>
<tr>
<td>Travel</td>
<td>22,100</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>14,745</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>500</td>
</tr>
<tr>
<td>Refunds</td>
<td>120</td>
</tr>
<tr>
<td>Payment as Agent</td>
<td>1,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$109,877</td>
</tr>
</tbody>
</table>

SECTION 9. There is hereby appropriated out of the Public Works Contractors State License Board Fund the sum of $77,096 to the Public Works Contractors State License Board for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$47,570</td>
</tr>
<tr>
<td>Travel</td>
<td>4,000</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>23,076</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>1,950</td>
</tr>
<tr>
<td>Refunds</td>
<td>500</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$77,096</td>
</tr>
</tbody>
</table>

SECTION 10. There is hereby appropriated out of the State Board of Accountancy Fund the sum of $19,990 to the State Board of Accountancy for the period from July 1, 1971 through June 30, 1972 to be expended as follows:

<table>
<thead>
<tr>
<th>FOR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$6,266</td>
</tr>
<tr>
<td>Travel</td>
<td>2,300</td>
</tr>
<tr>
<td>Other Current Expense</td>
<td>10,824</td>
</tr>
<tr>
<td>Refunds</td>
<td>600</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$19,990</td>
</tr>
</tbody>
</table>

Approved March 11, 1971.
CHAPTER 93
(S. B. 1114)

AN ACT
AMENDING SECTION 20-223, IDAHO CODE, RELATING TO OFFENSES NOT PAROLABLE, BY PROVIDING THAT THE BOARD OF CORRECTION SHALL NOT ACCEPT AN APPLICATION FOR PAROLE NOR INTERVIEW ANY PRISONER FOR PAROLE WHO WAS COMMITTED TO THE STATE PENITENTIARY FOR ANY CRIME FOR WHICH THE PRISONER RECEIVED A LIFE SENTENCE OR FOR ANY OF THE FOLLOWING CRIMES: HOMICIDE IN ANY DEGREE, TREASON, RAPE WHERE VIOLENCE IS AN ELEMENT OF THE CRIME, ROBBERY OF ANY KIND, KIDNAPPING, BURGLARY WHEN ARMED WITH A DANGEROUS WEAPON, ASSAULT WITH INTENT TO KILL, OR MURDER IN THE SECOND DEGREE, ANY CRIME OF RAPE, INCEST, CRIME AGAINST NATURE, OR COMMITTING A LEWD ACT UPON A CHILD, OR WITH AN ATTEMPT OR ASSAULT WITH INTENT TO COMMIT ANY OF SAID CRIMES, OR ANY PRISONER SERVING A SENTENCE AS A HABITUAL OFFENDER, UNTIL SAID PRISONER HAS SERVED EITHER A PERIOD OF FIVE YEARS OR ONE-THIRD OF THE ORIGINAL SENTENCE, WHICHEVER IS THE LEAST, PROVIDING THAT THE ABOVE LIMITATION SHALL APPLY ONLY TO THOSE PRISONERS SENTENCED ON AND AFTER THE FIRST DAY OF JULY, 1971.

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

SECTION 1. That Section 20-223, Idaho Code, be, and the same is hereby amended to read as follows:

20-223. PAROLE, RULES AND REGULATIONS GOVERNING _ OFFENSES NOT PAROLABLE. _ The state board of correction shall have the power to establish rules and regulations under which any prisoner, excepting any under sentence of death, may be allowed to go upon parole but to remain while on parole in the legal custody and under the control of the board and subject to be taken back into confinement at the direction of
the board; provided, however, that no person serving a life sentence shall be eligible for release on parole until he has served at least ten (10) years. No person serving sentence for any of the following crimes: homicide in any degree, treason, rape where violence is an element of the crime, robbery of any kind, kidnapping, burglary when armed with a dangerous weapon, assault with intent to kill, or murder in the second degree, shall be released on parole before he has served at least one-third (1/3) of his sentence. No person serving sentence for any of the following crimes: rape, incest, crime against nature, or committing a lewd act upon a child or with an attempt or assault with intent to commit any of the said crimes, or whose history and conduct indicate to the state board of correction that he is a sexually dangerous person, shall be released or paroled except upon the examination and recommendation of one or more psychiatrists licensed to practice medicine in the state of Idaho, to be selected by the state board of correction. Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interests of society, not as a reward of clemency. It shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the board believes that he is able and willing to fulfill the obligations of a law abiding citizen. The board may also by their rules and regulations fix the times and conditions under which any application denied shall be reconsidered.

The board shall not accept an application for parole and shall not interview any prisoner for parole who was committed for any of the following crimes; any crime for which the prisoner received a life sentence, any crime of violence, to-wit: homicide in any degree, treason, rape where violence is an element of the crime, robbery of any kind, kidnapping, burglary when armed with a dangerous weapon, assault with intent to kill, or murder in the second degree, any crime of rape, incest, crime against nature, or committing a lewd act upon a child, or with an attempt or assault with intent to commit any of said crimes, or any prisoner serving a sentence as a habitual offender, until said prisoner has served either a period of five (5) years or one-third (1/3) of the original sentence, whichever is the least. The above limitation on parole eligibility shall affect only those prisoners who are sentenced on and after the first day of July, 1971.
No person or persons who have been committed for the crime of murder in the first or second degree in which the crime was committed in the commission or attempt to commit any sex offense upon the person of the victim of such crime, shall be released from custody before the expiration of the full term of his or their sentence, by said board, by pardon, or parole.

Approved March 11, 1971.

CHAPTER 94
(S. B. 1143)

AN ACT
RELATING TO THE DUTIES OF PROSECUTING ATTORNEY, AMENDING SECTION 31-2604, IDAHO CODE, TO PROVIDE THAT THE PROSECUTING ATTORNEY SHALL NOT BE REQUIRED TO PROSECUTE TRAFFIC OFFENSES AND MISDEMEANOR CRIMES COMMITTED WITHIN THE MUNICIPAL LIMITS OF A CITY WHEN THE ARREST IS MADE OR A CITATION IS ISSUED BY A CITY LAW ENFORCEMENT OFFICIAL, IN WHICH CASE THE CITY ATTORNEY OR HIS DEPUTY IS RESPONSIBLE THEREFOR; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-2604, Idaho Code, be, and the same is hereby amended to read as follows:

31-2604. DUTIES OF PROSECUTING ATTORNEY. — It is the duty of the prosecuting attorney:

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people, or the state, or the county, are interested, or are a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county.

2. To prosecute all criminal actions for violation of all laws or ordinances, except city ordinances, and except traffic offenses and misdemeanor crimes committed within the municipal limits of a city when the arrest is made or a citation issued by a city law enforcement official, which shall be prosecuted by the city attorney or his deputy, before the
magistrate's division of the district court for his county when called upon by said courts, and to conduct preliminary criminal examinations which may be had before such magistrates, and to prosecute or defend all civil actions in which the county or state is a party, plaintiff or defendant, or in which the county or state is interested, before the magistrate's division of the district court of the county.

3. To give advice to the board of county commissioners, and other public officers of his county, when requested in all public matters arising in the conduct of the public business entrusted to the care of such officers.

4. To attend, when requested by any grand jury for the purpose of examining witnesses before them; to draw bills of indictments, informations and accusations; to issue subpoenas and other process requiring the attendance of witnesses.

5. On the first Monday of each month to settle with the auditor, and pay over all money collected or received by him during the preceding month, belonging to the county or state, to the county treasurer, taking his receipt therefor, and to file, on the first Monday of January in each year, in the office of the auditor of his county, an account verified by his affidavit, of all money received by him during the preceding year, by virtue of his office, for fines, forfeitures, penalties or costs, specifying the name of each person from whom he receives the same, the amount received from each, and the cause for which the same was paid.

6. To perform all other duties required of him by any 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.

Approved March 11, 1971.

CHAPTER 95
(S. B. No. 1125)

AN ACT
AMENDING SECTION 23-927, IDAHO CODE, RELATING TO HOURS OF SALE OF LIQUOR BY AUTHORIZING A LICENSEE HAVING SEPARATE BANQUET AREA OR MEETING ROOM FACILITIES TO THEREIN DISPENSE LIQUOR ON SUNDAY DURING
RESTRICTED HOURS TO BONA FIDE PARTICIPANTS OF ORGANIZED BANQUETS, RECEPTIONS OR CONVENTIONS FOR CONSUMPTION ONLY WITHIN THE CONFINES OF SUCH FACILITIES.

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

SECTION 1. That Section 23-927, Idaho Code, be, and the same is hereby amended to read as follows:

23-927. HOURS OF SALE OF LIQUOR. No liquor shall be sold, offered for sale, or given away upon any licensed premises during the following hours:

a. Sunday, Memorial Day, Thanksgiving and Christmas from 1:00 o'clock A.M., to 10 o'clock A.M. the following day; provided however, that on any Sunday not otherwise being a prescribed holiday, it shall be lawful for a licensee having banquet area or meeting room facilities, separate and apart from the usual dispensing area (bar room) and separate and apart from a normal public dining room unless such dining room is closed to the public, to therein dispense liquor between the hours of 2 o'clock P.M. and 11 o'clock P.M. to bona fide participants of banquets, receptions or conventions for consumption only within the confines of such banquet area or meeting room facility.

b. On any other day between 1:00 o'clock A.M. and 10:00 o'clock A.M.

c. On any day of a general or primary election until after the time when the polls are closed.

d. When any city or village has any ordinance further limiting the hours of sale of liquor, by the drink, then such hours shall be fixed by such ordinance.

Approved March 11, 1971.

CHAPTER 96
(S. B. No. 1116)

AN ACT

PROVIDING FOR THE GRANTING OF GOODTIME TO INMATES IN STATE CORRECTIONAL INSTITUTIONS, PROVIDING A SCHEDULE UPON WHICH SUCH GOODTIME SHALL BE
COMPUTED; PROVIDING FOR THE FORFEITURE AND WITHHOLDING OF GOODTIME FROM INMATES IN STATE CORRECTIONAL INSTITUTIONS, PROVIDING FOR A HEARING BEFORE REVOCATION OR FORFEITURE OF GOODTIME; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 1, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 20-101A, Idaho Code, and to read as follows:

20-101A. Each person convicted of an offense against the state and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subject to punishment, is entitled to a deduction from the term of his sentence beginning with the day on which the sentence starts to run as follows:

(1) Five (5) days for each month, if the sentence is not less than six (6) months and not more than one (1) year.
(2) Six (6) days for each month, if the sentence is more than one (1) year and less than three (3) years.
(3) Seven (7) days for each month, if the sentence is not less than three (3) years nor more than five (5) years.
(4) Eight (8) days for each month if the sentence is not less than five (5) years nor more than ten (10) years.
(5) Ten (10) days for each month, if the sentence is ten (10) years or more.

When two (2) or more consecutive sentences are served, the basis upon which the deduction is computed is the aggregate of several sentences.

In addition, those inmates assigned to prison industries or outside the main prison compound may be awarded extra goodtime under rules adopted by the state board of correction, not to exceed five (5) days per month.

Inmates performing exceptionally meritorious or outstanding services under rules adopted by the state board of correction may be awarded a lump sum of goodtime. The number of days awarded may not exceed the regulatory maximum.

SECTION 2. That Chapter 1, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 20-101B, Idaho Code, and to read as follows:

20-101B. Inmates who fail to observe faithfully the rules of the
institutions may have goodtime withheld or forfeited under rules adopted by
the state board of correction.

Forfeited or withheld goodtime may only be restored by the board of
correction or its authorized agent.

Such revocation or forfeiture shall not be made except upon a hearing
upon the question of the infraction of the rules charged to such convicted
person before the state board of correction.

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 March 11, 1971.

CHAPTER 97
(S. B. No. 1115)

AN ACT

AMENDING SECTION 19-2601, IDAHO CODE, RELATING TO
COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE
AND PROBATION, BY PROVIDING THAT THE COURT MAY
SUSPEND THE EXECUTION OF JUDGMENT DURING THE FIRST
ONE HUNDRED AND TWENTY DAYS OF A SENTENCE DURING
WHICH TIME THE COURT RETAINS JURISDICTION AND PLACES
THE DEFENDANT ON PROBATION; AMENDING SECTION
19-2604, IDAHO CODE, RELATING TO DISCHARGE OF
DEFENDANT AND AMENDMENT OF JUDGMENT, BY PROVIDING
THAT IF SENTENCE HAS BEEN IMPOSED BUT SUSPENDED
DURING THE FIRST ONE HUNDRED AND TWENTY DAYS AND
THE DEFENDANT PLACED ON PROBATION, THE COURT MAY
AMEND THE JUDGMENT OF CONVICTION FROM CUSTODY OF
THE STATE BOARD OF CORRECTION TO CONFINEMENT IN A
PENAL FACILITY AND SUCH AMENDED JUDGMENT MAY BE
DEEMED A MISDEMEANOR CONVICTION.

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

SECTION 1. That Section 19-2601, Idaho Code, be, and the same is
hereby amended to read as follows:
19-2601. COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE – PROBATION. – Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion, may:

1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, in the state Youth Training Center; or

2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and place the defendant on probation under such terms and conditions as it deems necessary and expedient; or

3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation; or

4. Suspend the execution of the judgment at any time during the first sixty (60) one hundred and twenty (120) days of a sentence to the custody of the state board of correction, during which time the court shall retain jurisdiction over the defendant which jurisdiction shall be entered on the order of commitment, and place the defendant on probation under such terms and conditions as it deems necessary and expedient, notwithstanding that the term of the court during which such defendant was convicted or sentenced may have expired.

5. If the crime involved is a felony and if judgment is withheld as provided in 3 above or if judgment and a sentence of custody to the state board of correction is suspended at the time of judgment in accordance with 2 above or as provided by 4 above and the court shall place the defendant upon probation, it shall be to the board of correction.

6. If the crime involved is a misdemeanor, indictable or otherwise, or if the court should suspend any remaining portion of a jail sentence already commuted in accordance with 1 above, the court, if it grants probation, may place the defendant on probation.

SECTION 2. That Section 19-2604, Idaho Code, be, and the same is hereby amended to read as follows:

19-2604. DISCHARGE OF DEFENDANT – AMENDMENT OF JUDGMENT. – 1. If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, the court may, if convinced by the showing made that there is no longer cause for
continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant; and this shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

2. If sentence has been imposed but suspended during the first sixty-one hundred and twenty (120) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in 4 of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of his probation, the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

Approved March 11, 1971.

CHAPTER 98
(H. B. No. 118)

AN ACT
REPEALING SECTION 41-3201, IDAHO CODE, RELATING TO DEFINITION OF FRATERNAL BENEFIT SOCIETIES; AMENDING CHAPTER 32, TITLE 41, IDAHO CODE, BY ADDING A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 41-3201, IDAHO CODE, TO DEFINE FRATERNAL BENEFIT SOCIETIES AND TO PROVIDE FOR LEGISLATIVE INTENT AS TO EXEMPTIONS; PROVIDING FOR CRITERIA BY WHICH COMMISSIONER OF INSURANCE MAY DISALLOW EXEMPTIONS; AND PROVIDING FOR ADMINISTRATIVE REVIEW AND HEARING.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. That Section 41-3201, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 32, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 41-3201, Idaho Code, and to read as follows:

41-3201. DECLARATION OF INTENT __DEFINITION OF FRATERNAL BENEFIT SOCIETIES. — It is the intent of the legislature to allow exemption from the insurance laws of this state, to those societies, orders or lodges which are primarily organized and conducted for the benefit of its members in pursuing fraternal and benevolent endeavors, rather than ventures resulting in pecuniary gain.

(1) Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of section 41-3242 (1) (b) of this chapter whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

(2) In the event any society, order or lodge which:
(a) maintains an “insurance agency” structure; or
(b) engages or employs “agents” whose primary source of income is derived from the sale or service of insurance; or
(c) has as one of its primary purposes the offering of applications for insurance, the commissioner of insurance may disallow any such society, order or lodge exemption from the insurance laws of this state.

(3) Persons, societies, orders or lodges aggrieved by any ruling hereunder are entitled to review and hearing pursuant to chapter 52, title 67, Idaho Code.

(4) When used in this chapter the word “society”, unless otherwise indicated, shall mean fraternal benefit society.

Approved March 11, 1971.
CHAPTER 99
(S. B. No. 1149)

AN ACT
AMENDING SECTION 57-722, IDAHO CODE, RELATING TO THE INVESTMENT POWERS OF THE ENDOWMENT FUND INVESTMENT BOARD OR TRUSTEES BY STRIKING THAT LIMITATION UPON INVESTMENT IN CONVERTIBLE BONDS PROVIDED FOR INVESTMENT OF STOCK UPON CONVERSION, ADDING A REQUIREMENT THAT CONVERTIBLE BONDS HAVE A BBB RATING OR BETTER; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 57-722, Idaho Code, be, and the same is hereby amended to read as follows:

57-722. INVESTMENT POWERS OF TRUSTEES LIMITATIONS.

The board or its trustees may, and they are hereby authorized to, invest the permanent endowment funds of the state of Idaho in the following manner and in the following investments or securities and none others:

(1) For a period of two (2) years following the effective date of this act March 25, 1969, not more than fifty per cent (50%) of the endowment funds as now invested can be reinvested otherwise than in United States treasury bills, United States treasury notes, or other United States governmental debt instruments.

(2) United States, state, county, city, or school district bonds or state warrants.

(3) Bonds, notes, or other obligations of the United States or those guaranteed by, or for which the credit of, the United States is pledged for payment of the principal and interest or dividends thereof.

(4) Bonds, notes, or other obligations of the state of Idaho and its political subdivisions, or bonds, notes, and other obligations of other states and their political subdivisions, provided such bonds, notes or other obligations or the issuing agency for other than the state of Idaho and its political subdivisions have an AAA rating or higher by a commonly known rating service.

(5) Bonds or notes of any corporation organized, controlled and operating within the United States which have an A rating or higher by a commonly known rating service. Nothing in this subsection shall apply to the provisions of subsection (6) immediately following.
(6) Corporate obligations designated as corporate convertible debt securities, but within the limits hereinafter provided for the investment of stock, upon conversion which have a BBB rating or higher by a commonly known rating service, so long as the right of conversion is not exercised.

(7) Obligations secured by mortgages constituting a first lien upon real property in the state of Idaho which are fully insured or guaranteed as to the payment of the principal by the government of the United States or any agency thereof.

(8) Common or preferred stocks of corporations, provided that no more than twenty-five per cent (25%) of the principal amount of any one (1) permanent endowment fund may be invested in common or preferred stock of corporations in the first year following the enactment hereof. Thereafter, the per cent of the principal amount of the fund invested in common or preferred stock of corporations may be increased at the direction of the investment board by no more than ten per cent (10%) in any one (1) calendar year except that at no time shall the per cent of the principal amount of any endowment fund invested in common or preferred stock of corporations exceed fifty per cent (50%). In computing the per cent of the principal amount of the fund which may be invested in common or preferred stock of corporations, the board shall consider the cost of common or preferred stocks which the fund is holding at the time of computation and not the current market value thereof.

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 March 12, 1971.

CHAPTER 100
(S. B. No. 1104 as amended in the House)

AN ACT
AMENDING SECTION 22-2718, IDAHO CODE, RELATING TO THE POWERS AND DUTIES OF THE STATE SOIL CONSERVATION COMMISSION TO PROVIDE THAT THE STATE SOIL CONSERVATION COMMISSION MEMBERS MAY RECEIVE A PER DIEM ALLOWANCE OF TWENTY-FIVE DOLLARS FOR EACH
DAY THEY ARE ACTUALLY ENGAGED IN STATE SOIL CONSERVATION COMMISSION BUSINESS.

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

SECTION 1. That Section 22-2718, Idaho Code, be, and the same is hereby amended to read as follows:

22-2718. STATE SOIL CONSERVATION COMMISSION. — A. There is hereby established and created the state soil conservation commission which shall perform all functions conferred upon it by this chapter. The commission shall consist of five (5) members appointed by the governor, but no more than three (3) members shall be a member of the same political party. The term of office of each commission member shall be five (5) years; except that upon July 1, 1967, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Any commissioner may be removed during his term of office by the governor. Any commissioner so removed shall have notice of the same in writing, specifying the reasons for the removal. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. The commission may invite the state conservationist of the United States department of agriculture soil conservation service, the president of the Idaho association of soil conservation districts and the dean of the College of Agriculture of the University of Idaho or his designated representative to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules as may be necessary for the execution of its functions under this act.

B. The state soil conservation commission may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commission may call upon the attorney-general of the state for such legal services as it may require, or may employ its own counsel. It shall have authority to delegate
to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations, and shall be furnished with the necessary supplies and equipment. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

C. The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall receive no compensation salary for their services on the commission, but shall be entitled to per diem of twenty-five dollars ($25) for each day when actually engaged in commission business and shall be reimbursed for travel and expenses at the same rate as other state officials expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the commission. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following responsibilities:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
(2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
(3) To coordinate the progress of the several soil conservation districts
organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.

Approved March 12, 1971.

CHAPTER 101
(S. B. No. 1032 as amended in the House)

AN ACT
AMENDING SECTION 37-1915, IDAHO CODE, WHICH RELATES TO EXEMPTIONS FROM CONTINUOUS INSPECTION OF ANIMALS FOR SLAUGHTER AND MEAT; TO PROVIDE AN EXEMPTION FOR GAME ANIMALS; PROVIDING FOR ADDITION OF THE WORDS "AT THE REQUEST OF", AND STRIKING THE WORDS "DELIVERED BY"; PROVIDING THAT THE SECTION RELATES TO ESTABLISHMENTS AND TO MOBILE UNITS; STRIKING THE PROVISION THAT CUSTOM OPERATORS CANNOT BUY OR SELL MEAT; PROVIDING THAT CUSTOM SLAUGHTERED CARCASSES, MEAT AND MEAT FOOD PRODUCTS TO BE USED BY THE OWNER THEREOF, OR HIS HOUSEHOLD, AND/OR NONPAYING GUESTS OR EMPLOYEES, MAY BE PROCESSED IN INSPECTED ESTABLISHMENTS UNDER REGULATIONS TO ASSURE SEPARATION OF CUSTOM SLAUGHTER OR CUSTOM PROCESSING FROM PRODUCTS WHICH ARE TO BE OFFERED FOR SALE, AND TO INSURE IDENTIFICATION, PROPER LABELS, AND SANITATION; PROVIDING THAT THE COMMISSIONER OF AGRICULTURE MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION, AND THAT HE MAY EXEMPT INSPECTED ESTABLISHMENTS FROM INSPECTION AS TO ANIMALS, MEAT, OR MEAT FOOD PRODUCTS, SLAUGHTERED OR PREPARED ON A CUSTOM BASIS; AND PROVIDING FOR
CONSTRUCTION OF THE SECTION IN HARMONY WITH THE FEDERAL WHOLESALE MEAT ACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-1915, Idaho Code, be, and the same is hereby amended to read as follows:

37-1915. EXCEPTIONS TO INSPECTION REQUIREMENT. —

(a) The provisions of this act requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not apply (1) to the slaughtering by any person of animals of his own raising, or of any game animals, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and/or his nonpaying guests and employees; nor (2) to the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by request of the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use in the household of such owner, by him, and members of his household and/or his nonpaying guests and employees; provided, that such slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat food products of any cattle, sheep, swine, goats or equines, capable of use as human food, whether such slaughterers operate an establishment or operate from a mobile unit engaged in custom slaughter or both; nor (3) to the custom preparation by any person, firm or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of cattle, sheep, swine, goats, or from game animals, at the request of the owner thereof for such custom preparation, and transportation in commerce of such custom prepared articles, exclusively for use in the household of such owner, by him and members of his household and/or his nonpaying guests and employees.

Provided, that in cases where such person, firm, or corporation engages in such custom operations at an establishment at which inspection under this title is maintained, the commissioner of agriculture may exempt from such inspection at an establishment any animals slaughtered or any meat or meat food products otherwise prepared on a custom basis; provided further, that custom operations at any establishment shall be exempt from inspection.
requirements as provided by this section only if the establishment at all times keeps meat and meat products from inspected and non-inspected animals properly separated and clearly marked “NOT FOR SALE” immediately after being slaughtered, processed or packaged and kept so identified and separated until delivered to the owner, his agent or employee. Properly separated for the purpose of this section, shall mean that all inspected and non-inspected animals shall be slaughtered and processed at separate and distinct intervals and that after non-inspected animals are slaughtered or processed all premises and equipment thus used shall be properly sanitized in accordance with the rules of sanitation promulgated by the commissioner of agriculture; provided further that at no time shall inspected and non-inspected meat and meat products be commingled or come in contact with each other and the holding coolers must have areas clearly marked for inspected or non-inspected carcasses or parts of carcasses whichever the case might be. The holding coolers shall be separate units in order that contact of inspected and non-inspected meat products can at all times be prevented.

(b) The provisions of this act requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(c) The slaughter of animals and preparation of articles referred to in paragraphs (a)(2), (a)(3), and (b) of this section shall be conducted in accordance with such sanitary conditions as the commissioner may by regulations prescribe. Violation of any such regulation is prohibited.

(d) The adulteration and misbranding provisions of this act and the regulations made hereunder, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section.

(e) This section shall be enforced and construed so that its requirements shall be equal to the Federal Wholesome Meat Act or any regulations promulgated thereunder and shall not be enforced or construed as allowing lower requirements or standards than those provided for by the Federal Wholesome Meat Act or any regulations promulgated thereunder which will endanger the state’s ability to continue to carry on a meat inspection program and the commissioner of agriculture may adopt and
enforce all regulations necessary to fulfill this purpose and carry out the provisions of this section.

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 March 12, 1971.

CHAPTER 102
(H. B. No. 144)

AN ACT
AMENDING SECTION 19-4705, IDAHO CODE, RELATING TO FINES AND FORFEITURES, BY PROVIDING THAT FORTY-FIVE PERCENT OF FISH AND GAME FINES AND FORFEITURES SHALL BE EQUITABLY DISTRIBUTED BY THE STATE TREASURER TO THOSE COUNTIES WHEREIN THERE ARE FISH AND GAME DEPARTMENT LANDS RATHER THAN CREDITING SAME TO THE FISH AND GAME FUND AS PREVIOUSLY PROVIDED; BY REQUIRING THE DIRECTOR OF THE FISH AND GAME DEPARTMENT TO ANNUALLY FURNISH THE STATE TREASURER A COUNTY BY COUNTY LISTING OF ALL DEPARTMENT OWNED LANDS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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.

(a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which such judgment was rendered. Such 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 act. Every other existing law regarding the disposition of fines and forfeitures is hereby repealed to the extent such law is inconsistent with the provisions of this act.
(b) (1) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund, forty-five per cent (45%) to the director of the fish and game department for deposit in the fish and game fund, twenty-two and one-half per cent (22 1/2%) to the current expense fund and twenty-two and one-half per cent (22 1/2%) to the general school fund of the county in which the violation occurred.

(2) The remaining forty-five per cent (45%) of said fish and game fines and forfeitures shall be remitted to the state treasurer for distribution annually to the general school fund of those counties of the state wherein there are fish and game department lands, with each of said counties to receive a share proportional to the portion of the statewide total acreage of fish and game department owned lands situated therein. Such annual distribution shall be made by the state treasurer beginning March 15, 1973, for the preceding calendar year. The director of the fish and game department shall provide the state treasurer with county by county listings of all lands owned by said department within each county of the state. Said ownership list for the previous calendar year shall be provided by the director commencing January 20, 1973, and annually thereafter.

The allocation of a percentage of fines and forfeitures remitted for violations of fish and game laws to the various counties is not in lieu of taxes but rather is to provide revenues for the schools.

(c) Fines and forfeitures remitted for violation of state motor vehicle laws shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund, forty-five per cent (45%) to the state treasurer for deposit in the state highway fund, twenty-two and one-half per cent (22 1/2%) to the current expense fund and twenty-two and one-half per cent (22 1/2%) to the general school fund of the county in which the violation occurred.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game or motor vehicles laws shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the current expense fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the current expense fund of the county whose ordinance was violated.
(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this act shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general fund and ninety per cent (90%) to the current expense fund of the county in which the violation occurred.

SECTION 2. This act shall be in full force and effect on and after January 1, 1972.

Approved March 12, 1971.

CHAPTER 103
(H. B. No. 209)

AN ACT
RELATING TO EDUCATION; PROVIDING THAT PROFESSIONAL EMPLOYEES AND BOARDS OF TRUSTEES OF EACH SCHOOL DISTRICT, INCLUDING CHARTER DISTRICTS, SHALL UPON REQUEST OF EITHER PARTY, ENTER INTO A NEGOTIATION AGREEMENT, AND NEGOTIATE ON THOSE MATTERS AGREED TO IN ANY NEGOTIATION AGREEMENT BETWEEN THE LOCAL BOARD OF TRUSTEES AND LOCAL EDUCATION ORGANIZATION REPRESENTING PROFESSIONAL EMPLOYEES; DEFINING TERMS; PROVIDING FOR EXCLUSIVE REPRESENTATION FOR NEGOTIATIONS; PROVIDING FOR MEDIATION; PROVIDING FOR FACT FINDING; PROVIDING THAT THIS ACT SHALL NOT CONFLICT WITH EXISTING RESPONSIBILITIES OF BOARDS OF TRUSTEES AND PROVIDING FOR ACTION DURING EMERGENCIES; AND ESTABLISHING AN EFFECTIVE DATE.

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

SECTION 1. The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall upon its own initiative or upon the request of a local education organization, enter into a negotiation agreement with professional employees and negotiate with such employees
in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization. A request for negotiations may be initiated by either party to such negotiation agreement.

SECTION 2. Definition of terms as used in this act:

1. "Professional employee" means any certificated employee of a school district, including charter districts; provided, however, that superintendents, supervisors or principals may be excluded from the professional employee group if a negotiation agreement between the board and local education organization so specifies.

2. "Local education organization" means any local district organization duly chosen and selected by a majority of the professional employees as their representative organization for negotiations under this act.

3. "Negotiations" mean meeting and conferring in good faith by representatives of a local board of trustees and the authorized local representative organization of professional employees, for the purpose of reaching an agreement, upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties.

SECTION 3. The representative organization designated or selected for the purpose of negotiations by the majority of the professional employees in a school district shall be the exclusive representative for all professional employees in that district for purposes of negotiations. Provided, however, that the individual or individuals selected to negotiate for the professional employees shall be a member of the organization designated to represent the professional employees and shall be a professional employee of the local school district. A local board of trustees shall negotiate matters covered by a negotiations agreement only with the representative organization designated by the professional employees of a school district.

SECTION 4. In the event the parties in negotiations are not able to come to an agreement upon items submitted for negotiations under a negotiations agreement between the parties, one or more mediators may be appointed. The issue or issues in dispute shall be submitted to mediation at the request of either party in an effort to induce the representatives of the board and the representative organization to resolve the conflict. The procedures for appointment of and compensation for the mediators shall be determined by both parties.

SECTION 5. 1. If mediation fails to bring agreement on all negotiable issues, the issues which remain in dispute may be submitted to fact-finding
by request of either party. One or more fact-finders shall be appointed by
the parties by mutual agreement. If such agreement cannot be reached
within thirty (30) days of the request for such appointment, the state
superintendent of public instruction shall make such appointment. The
fact-finder shall have authority to establish procedural rules, conduct
investigations and hold hearings during which each party to the dispute shall
be given an opportunity to present its case with supporting evidence.

2. Within thirty (30) days following designation of the fact-finder, he
shall submit a report in writing to the respective representatives of the board
and the professional employees, setting forth findings of fact and
recommendations on the issues submitted.

SECTION 6. Nothing contained herein is intended to or shall conflict
with, or abrogate the powers or duties and responsibilities vested in the
legislature, state board of education, and the board of trustees of school
districts by the laws of the state of Idaho. Each school district board of
trustees is entitled, without negotiation or reference to any negotiated
agreement, to take action that may be necessary to carry out its
responsibility due to situations of emergency or acts of God.

SECTION 7. This act shall be in full force and effect on and after July
1, 1971.

Approved March 12, 1971.

CHAPTER 104
(H. B. No. 177 as amended)

AN ACT
AMENDING SECTION 25-2907, IDAHO CODE, TO PROVIDE THAT ALL
CATTLE SHALL BE ASSESSED TEN CENTS PER HEAD FOR THE
IDAHO BEEF COUNCIL; AND AMENDING SECTION 25-2908,
IDAHO CODE, TO PROVIDE THAT ANY PERSON MAY REQUEST
A REFUND OF SAID TEN CENT ASSESSMENT WITHIN TEN DAYS
AFTER THE INSPECTION OF SAID CATTLE BY THE STATE
BRAND INSPECTOR.

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

SECTION 1. That Section 25-2907, Idaho Code, be, and the same is
hereby amended to read as follows:

...
25-2907. ASSESSMENTS — COLLECTION. — There is hereby levied and imposed upon all cattle hereafter sold in this state an assessment of not more than ten 10 cents ($0.10) per head, to be paid by the owner, provided, however, that no assessment shall be made on cattle moved within the state for grazing or for fattening where there is no change in ownership. The state brand inspector shall collect said assessment in addition to, at the same time, in the same manner and upon the same animals as, the fee charged for the state brand inspection required upon the transfer of title to such cattle. Such assessment so collected belongs to and shall be paid to the Idaho beef council, either directly or later by remittance together with a report. The council shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the council and the inspector.

SECTION 2. That Section 25-2908, Idaho Code, be, and the same is hereby amended to read as follows:

25-2908. DISBURSEMENTS — REFUNDS. — A total of at least twenty 20 per cent (20%) of all funds so collected by the council, minus refunds, shall be paid by it to the national livestock and meat board and the beef industry council for their use in promotional, research and educational activities.

Any person shall have the right to request from the council in writing, within ten (10) days after payment thereof, a refund of all or any portion of the assessment levied hereunder and paid by him.

Approved March 12, 1971.

CHAPTER 105
(H. B. No. 220)

AN ACT
AMENDING CHAPTER 8, TITLE 49, IDAHO CODE, BY ADDING A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 49-849, IDAHO CODE, MAKING IT UNLAWFUL FOR THE OPERATOR OF A MOTORCYCLE OR MOTOR DRIVEN CYCLE TO CARRY PASSENGERS UNLESS SUCH VEHICLE IS EQUIPPED WITH FOOTRESTS FOR THE USE OF THE PASSENGER.

Be It Enacted by the Legislature of the State of Idaho:
SECTION 1. That Chapter 8, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 49-849, Idaho Code, and to read as follows:

49-849. FOOTRESTS ON MOTORCYCLES AND MOTOR DRIVEN CYCLES. — It shall be unlawful for the operator of any motorcycle or motor driven cycle to carry a passenger on said vehicle unless it is equipped with footrests designed exclusively for the use of a passenger on said vehicle.

Approved March 12, 1971.

CHAPTER 106
(H. B. No. 212)

AN ACT
AMENDING SECTION 33-3712, IDAHO CODE, TO PROVIDE THAT BURSARS ARE TO BE SUPERVISED BY SUCH OFFICER AS THE STATE BOARD OF EDUCATION AND BOARD OF REGENTS MAY DIRECT.

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

SECTION 1. That Section 33-3712, Idaho Code, be, and the same is hereby amended to read as follows:

33-3712. OFFICE OF BURSAR A PUBLIC OFFICE — DUTIES AND BOND OF BURSAR. — The office of bursar at state educational institutions is declared a public office. — And the state board of education in its capacity as boards of trustees for the several state educational institutions is empowered to fix the duties of bursars and in its discretion fix the amount of the bond to be given by such bursars as such officers. In the performance of his duties each bursar shall be supervised as the state board of education and board of regents may direct.

Approved March 12, 1971.

CHAPTER 107
(H. B. No. 91)

AN ACT
PROVIDING THAT A MINOR 14 YEARS OF AGE OR OLDER HAVING
CONTRACTED AN INFECTIOUS, CONTAGIOUS OR COMMUNICABLE DISEASE MAY REQUEST MEDICAL TREATMENT FOR SUCH DISEASE, WITHOUT THE NECESSITY OF THE CONSENT OF THE PARENTS OR LEGAL GUARDIAN; AND DECLARING AN EMERGENCY.

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

SECTION 1. Notwithstanding any other provision of law, a minor fourteen (14) years of age or older who may have come into contact with any infectious, contagious, or communicable disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law, or regulation adopted pursuant to law, to be reported to the local health officer. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section.

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 March 12, 1971.

CHAPTER 108
(H. B. No. 172)

AN ACT
AMENDING SECTION 63-702, IDAHO CODE, TO INCLUDE PIPELINE AND WATER COMPANIES OPERATING UNDER THE JURISDICTION OF THE IDAHO PUBLIC UTILITIES COMMISSION AS BEING ASSESSABLE IN THE NAME OF THE PERSON OPERATING SUCH PIPELINE OR WATER COMPANY, PROVIDING THAT SUCH PERSON SHALL BE REPRESENTATIVE OF EVERY TITLE AND INTEREST IN THE OPERATING PROPERTY OF SUCH PIPELINE, OR WATER COMPANY OPERATING UNDER THE JURISDICTION OF THE IDAHO PUBLIC UTILITIES COMMISSION, AND PROVIDING THAT NOTICE TO SUCH PERSON OR HIS
AGENT OR REPRESENTATIVE SHALL BE NOTICE TO EVERY TITLE AND INTEREST IN AND TO SUCH PROPERTY; AMENDING SECTION 63-703, IDAHO CODE, TO INCLUDE PROPERTY OF PIPELINE AND WATER COMPANIES UNDER THE JURISDICTION OF THE IDAHO PUBLIC UTILITIES COMMISSION NOT WITHIN THE MEANING OF THE TERM "OPERATING PROPERTY" WITHIN THOSE NONOPERATING PROPERTIES WHICH ARE TO BE ASSESSED BY THE ASSESSOR OF THE COUNTY IN WHICH THE PROPERTY IS SITUATE.

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

SECTION 1. That Section 63-702, Idaho Code, be, and the same is hereby amended to read as follows:

63-702. OPERATOR REPRESENTATIVE OF OWNER ASSESSMENT IN NAME OF OWNER. Any person operating a railroad, telegraph, telephone or electric current transmission line, pipeline, water company operating under the jurisdiction of the Idaho public utilities commission, in this state shall be representative of every title and interest in the operating property of said railroad, telegraph, telephone or electric current transmission line, pipeline, water company operating under the jurisdiction of the Idaho public utilities commission, as owner, lessee or otherwise, and notice to such person, or his agent or representative, shall be notice to all interests in such property for the purpose of taxation. The assessment of such operating property in the name of the owner, lessee or operating company, shall be deemed and held to be an assessment of all title and interest in such property of every kind and nature.

SECTION 2. That Section 63-703, Idaho Code, be, and the same is hereby amended to read as follows:

63-703. NONOPERATING PROPERTY ASSESSABLE BY COUNTY ASSESSOR. - All property belonging to any person owning, operating or constructing any railroad, telegraph, telephone or electric current transmission lines, pipeline, water company under the jurisdiction of the Idaho public utilities commission, wholly or partly within this state, not included within the meaning of the term "operating property," as defined in this act; namely, property not reasonably necessary for the maintenance and successful operation of such railroad, telegraph, telephone or electric current transmission line, pipeline, water company under the jurisdiction of the Idaho public utilities commission, including vacant lots and tracts of land, and lots and tracts of land with the buildings thereon not used in the
operation of such railroad, telegraph, telephone or electric current transmission line, pipeline, water company under the jurisdiction of Idaho public utilities commission, also tenement and resident property, except section houses, also hotels and eating houses, situate more then 100 feet from the main track of any such railroad, shall be assessed by the assessor of the county wherein the same is situated.

Approved March 12, 1971.

CHAPTER 109
(H. B. No. 131)

AN ACT
DEFINING THE BOUNDARIES OF THE SANDPOINT INDEPENDENT HIGHWAY DISTRICT IN BONNER COUNTY, STATE OF IDAHO;
REPEALING CHAPTER 174, LAWS OF 1939; AND DECLARING AN EMERGENCY.

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

SECTION 1. The boundaries of the Sandpoint Independent Highway District are hereby defined as follows:

Beginning at a point where the center of Sand Creek intersects the North boundary of Section 22, Township 57 North, Range 2 West, Boise Meridian, thence northerly along the channel of Sand Creek to the north boundary of the south half of the south half of Section 15, thence west to the center of Ella Avenue, thence north to the center of Walnut Street; thence west to the west line of said Section 15; thence south along the centerline of Division Street to a point lying 1090.4 feet north of the southwest corner of Section 15, thence North 89°35' West, 1924.2 feet to the east right of way line of a county road, thence South 17°55'30" West, 423.1 feet along said right of way line, thence South 89°30'10" East, 979.66 feet, thence south 300.0 feet, thence North 89°30'10" West, 531.90 feet, thence South 0°34' West, 388.03 feet, thence South 89°26' East, 1276.15 feet, thence north 329.59 feet, thence South 89°30'10" East, 336.0 feet to the centerline of Division Street, thence South along the centerline of Division Street to a point 30.0 feet west of the northwest corner of Block 46, Boyer's West End Addition to Sandpoint, thence west 330.0 feet, thence south
300.0 feet, thence east 330.0 feet to the center of Division Street, thence south along the centerline of Division Street to a point lying 169.75 feet south and 30.0 feet east of the northeast corner of Block 17 of Ohadi Acres plat, thence west to the west line of Block 17 of Ohadi Acres, thence south along the west line of Blocks 17 and 18 of Ohadi Acres to the southwest corner of Block 18 of Ohadi Acres, thence east along the south line of Block 18 of Ohadi Acres to a point lying 236.0 feet west of the centerline of Division Street, thence south on a line parallel with the centerline of Division Street, 317.5 feet, which point is the north property line of Superior Street, thence west 150.1 feet, thence south 195.6 feet, thence west 660.0 feet to the northwest corner of the High School grounds, thence south to the southwest corner of the High School grounds, thence west to the west line of the southeast one-quarter of the southeast one-quarter of Section 21, thence south along the west line of the southeast one-quarter of the southeast one-quarter of Section 21 to the south line of Section 21, the centerline of Ontario Street, thence east along the centerline of Ontario Street to a point lying 182.2 feet west of the westerly right of way line of Olive Avenue, thence south 681.17 feet to a point which is an intersection of the north right of way line of Birch Street and the west right of way line of Merton Avenue, thence along the west right of way line of Merton Avenue south 60.0 feet, thence continuing along the west right of way line of Merton Avenue to a point where said right of way line intersects the north right of way line of Elm Street, extended, thence South 32°40' West, 43.3 feet, thence South 25°27' East, 68.6 feet, thence South 17°46' West, 114.05 feet, thence South 54°17' East, 149.6 feet, thence South 67°32' East, 110.4 feet, thence North 45°31' East, 314.0 feet to the east line of Ella Avenue, thence south along the east line of Ella Avenue to a point where said line intersects the low water line of Lake Pend Oreille, thence northeasterly along said low water line to a point where the low water line intersects the north and south centerline of Section 27, thence north along said centerline to the centerline of Riverside Avenue, thence easterly along the centerline of Riverside Avenue to a point where said line intersects the centerline of Fourth Avenue, extended south, thence north along the centerline of Fourth Avenue, extended south, to a point of intersection with the south line of Riverside Drive, thence east along the south line of Riverside Drive to
the east line of Third Avenue, thence north along the east line of Third Avenue to the south line of Riverside Avenue, thence northeasterly along the south line of Riverside Drive to a point where said line intersects the south boundary of Pacific Street, thence east along the south boundary of Pacific Street to an intersection with the centerline of the alley in Block 18, Weil's Third Addition to Sandpoint, extended South, thence south to the shoreline of Lake Pend Oreille, thence easterly along the shoreline of Lake Pend Oreille to an intersection with a north and south line which lies parallel to and 160.0 feet east of the centerline of Riverside Drive, thence north along a line running parallel to and 160.0 feet east of the centerline of Riverside Drive to an intersection with the southerly right of way line of Highway U. S. 10-A and 95, thence west along the southerly right of way line of Highway U. S. 10-A and 95, to the east line of Riverside Avenue, thence north along the east line of Riverside Avenue to an intersection with the northerly right of way line of Highway U. S. 10-A and 95, thence easterly along said highway right of way line to an intersection with the west line of the Northern Pacific right of way, thence northerly along said west line of the Northern Pacific right of way to a point of intersection with the centerline of Lake Street extended, thence east along said Lake Street, extended, to the low water mark of Lake Pend Oreille, thence in a southerly direction along said low water mark to the point of intersection with the south line of Section 23, thence east along the south line of Section 23, one-fourth mile to a point, thence running in a northerly direction parallel with the low water mark of Lake Pend Oreille and one-fourth mile distance therefrom to the north line of said Section 23, thence running due west to the northwest corner of Section 23, thence due west to the center of Sand Creek, the place of beginning.

SECTION 2. That Chapter 174, Laws of 1939, be, and the same is hereby repealed.

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 March 12, 1971.
CHAPTER 110
(H.B. No. 57)

AN ACT
AMENDING SECTION 31-3106, IDAHO CODE, RELATING TO FIXING OF SALARIES OF COUNTY OFFICERS, BY PROVIDING THAT THE BOARD OF COUNTY COMMISSIONERS SHALL FIX THE ANNUAL SALARIES OF COUNTY OFFICERS, EXCEPT COMMISSIONERS AND PROSECUTING ATTORNEYS, AT ITS ANNUAL MEETING IN APRIL; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-3106, Idaho Code, be, and the same is hereby amended to read as follows:

31-3106. SALARIES OF COUNTY OFFICERS. — It shall be the duty of the board of county commissioners of each county at its first meeting after the passage and approval of this act, annual meeting in April of each year to fix the annual salaries of the several county officers, except county commissioners and prosecuting attorneys, as of and from the second Monday of January, 1969, for the next ensuing two (2) years; and thereafter at its regular session in April next preceding any general election, to fix the annual salaries of the several county officers, except county commissioners and prosecuting attorneys, for a period of two (2) years commencing on the second Monday of January next after said meeting.

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 March 12, 1971.

CHAPTER 111
(S.B. No. 1050)

AN ACT
RELATING TO AFFAIRS OF DECEDEMTS, INCLUDING NON-PROBATE TRANSFERS AT DEATH, OF MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS
AND CONSTITUTING THE UNIFORM PROBATE CODE; SETTING FORTH THE SUBSTANTIVE AND PROCEDURAL RULES GOVERNING DISTRIBUTION AND MANAGEMENT OF PROPERTY AT DEATH, INCLUDING THE ORDER OF SUCCESSION TO AND DISTRIBUTION OF INTESTATE SEPARATE AND COMMUNITY PROPERTY, THE RIGHTS OF SURVIVING SPOUSES TO PROPERTY OF THE DECEDENT AND TO ELECT TO TAKE CONTRARY TO THE TERMS OF A WILL, THE RIGHTS OF PRETERMITTED CHILDREN; RULES REQUIRING SURVIVAL FOR A LIMITED PERIOD TO BE APPLIED IN THE EVENT OF DEATH INTESTATE AND PRESUMPTIVELY IN THE EVENT OF DEATH TESTATE; RULES FIXING THE RIGHTS OF SURVIVING SPOUSES AND DEPENDENT CHILDREN TO HOMESTEAD, EXEMPT PROPERTY AND A FAMILY ALLOWANCE; RULES PRESCRIBING THE REQUIREMENTS FOR EXECUTION, CONSTRUCTION, REVOCATION AND REVIVAL OF WILLS AND TESTAMENTARY INSTRUMENTS AND PREVENTING LAPSE IN CERTAIN CASES; RULES FOR EXECUTION OF CONTRACTS CONCERNING SUCCESSION; RULES GOVERNING THE EFFECT OF RENUNCIATION, DIVORCE, ANNULMENT AND SEPARATION, AND HOMICIDE UPON SUCCESSION, TESTATE AND INTESTATE, AND UPON CERTAIN CONTRACTUAL ARRANGEMENTS; RULES OF EVIDENCE RELATING TO PROOF OF MATTERS INVOLVED IN THE ADMINISTRATION OF ESTATES; RULES DESCRIBING THE EFFECT OF PROBATE, REQUIRING THAT A WILL BE PRESENTED WITHIN A LIMITED TIME FOR PROBATE; RULES FIXING VENUE; RULES ESTABLISHING STATUTES OF LIMITATION IN ACTIONS BY AND AGAINST THE ESTATE OF A DECEDED; RULES ESTABLISHING RIGHTS OF PRIORITY AND REQUIREMENTS FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, THE DUTIES AND POWERS OF PERSONAL REPRESENTATIVES, MANNER OF APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY OF PERSONAL REPRESENTATIVES, SUCCESSOR PERSONAL REPRESENTATIVES AND SPECIAL ADMINISTRATORS; THE DESIGNATION OF CLERKS OF THE DISTRICT COURT AS REGISTRARS OF WILLS; FLEXIBLE RULES FOR THE ADMINISTRATION OF ESTATES INVOLVING
APPLICATION FOR INFORMAL PROBATE AND APPOINTMENT TO THE REGISTRAR OF WILLS AND ACTION UPON SUCH APPLICATIONS BY THE REGISTRAR; PETITIONS FOR FORMAL TESTACY, APPOINTMENT AND DETERMINATION OF HEIRSHIP TO THE COURT AND ACTION UPON SUCH PETITIONS; REQUIREMENTS FOR NOTICE AND BONDING; SUPERVISED ADMINISTRATION; RULES FOR THE DISTRIBUTION OF PROPERTY BY THE PERSONAL REPRESENTATIVE AND THE AVAILABILITY AND EFFECT OF ORDERS FOR FINAL SETTLEMENT; THE EFFECT OF CONVEYANCES AND OTHER INSTRUMENTS EXECUTED BY PERSONAL REPRESENTATIVES AND OTHER COURTS; THE EFFECT OF RECORDING UPON INSTRUMENTS AND ORDERS; RULES AND REQUIREMENTS FOR PRESENTATION, PAYMENT AND DETERMINATION OF CREDITORS' CLAIMS; RULES FOR COLLECTION OF SMALL AMOUNTS OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION OF SMALL ESTATES; RULES FOR THE COMPROMISE OF CONTROVERSIES; RULES FOR ADMINISTRATION OF MULTI-STATE ESTATES; AND CERTAIN OTHER MATTERS RELATING TO THE DEVILOATION AND DISTRIBUTION OF PROPERTY AT DEATH; SETTING FORTH RULES FOR THE PROTECTION OF PERSONS WHO ARE MINORS, INCAPACITATED, DISABLED OR MISSING, INCLUDING RULES PERMITTING PAYMENT OF CERTAIN AMOUNTS WITHOUT FORMAL PROCEEDINGS AND AFFORDING PROTECTION TO PAYORS; PROCEDURES FOR DESIGNATION AND APPOINTMENT OF GUARDIAN OF THE PERSON OF MINORS, THE POWERS, DUTIES, AND RESPONSIBILITIES OF SUCH GUARDIANS, AND TERMINATION OR REMOVAL OF SUCH POWERS; THE PROCEDURES FOR DESIGNATION AND APPOINTMENT OF GUARDIANS OF THE PERSON OF INCAPACITATED PERSONS, THE POWERS, DUTIES AND RESPONSIBILITIES OF SUCH GUARDIANS, AND TERMINATION OR REMOVAL OF SUCH POWERS; PROCEDURES FOR DESIGNATION AND APPOINTMENT OF CONSERVATORS OF THE PROPERTY OF MINORS AND DISABLED PERSONS, THE POWERS, DUTIES AND RESPONSIBILITIES OF SUCH CONSERVATORS AND THE EFFECT OF THEIR ACTS, TERMINATION OF AUTHORITY AND
REMOVAL OF CONSERVATORS; RULES RELATING TO MATTERS INVOLVING THE ADMINISTRATION OF FUNDS PAYABLE BY THE VETERANS ADMINISTRATION; AND CERTAIN OTHER MATTERS RELATING TO INCAPACITATED PERSONS OR MINORS; ESTABLISHING RULES PERTAINING TO THE DESIGNATION OF PERSONS WITH POWER OF ATTORNEY AND THE EFFECT OF DEATH OR INCOMPETENCY UPON SUCH AGENTS; ESTABLISHING RULES AND PRESUMPTIONS FOR MULTI-PARTY ACCOUNTS, AFFORDING PROTECTION TO FINANCIAL INSTITUTIONS AND STRUCTURING RULES FOR PAYMENT OF SUCH ACCOUNTS UPON DEATH; ESTABLISHING A REQUIREMENT FOR REGISTRATION OF TRUSTS AND THE EFFECT OF FAILURE TO REGISTER; ESTABLISHING JURISDICTION OVER TRUSTS; SETTING FORTH THE DUTIES AND LIABILITIES OF TRUSTEES; ELIMINATING THE DISTINCTION BETWEEN TESTAMENTARY AND OTHER TRUSTS AND SETTING FORTH CERTAIN OTHER MATTERS PERTAINING TO TRUSTS; REPEALING SECTION 5-231, IDAHO CODE; REPEALING CHAPTERS 1, 2 AND 3, TITLE 14, IDAHO CODE; REPEALING SECTIONS 14-418, 14-419, 14-420, 14-421, 14-422 AND 14-423, IDAHO CODE; REPEALING CHAPTERS 1 THROUGH 15 AND CHAPTERS 17 THROUGH 22, TITLE 15, IDAHO CODE; PROVIDING THAT CHAPTER 16, TITLE 15, IDAHO CODE, FROM THE TIME OF THE EFFECTIVE DATE OF THIS ACT IS DESIGNATED AS CHAPTER 1, TITLE 14, IDAHO CODE; REPEALING SECTION 32-921, IDAHO CODE; REPEALING SECTION 68-1101, IDAHO CODE; AMENDING SECTIONS 6-542 AND 6-543, IDAHO CODE, TO CONFORM SAID SECTIONS TO THE UNIFORM PROBATE CODE; AMENDING SECTION 14-405, IDAHO CODE, TO PROVIDE THAT THE LIEN THEREIN PROVIDED SHALL BE RELEASED FROM PROPERTY SOLD OR TRANSFERRED AND SHALL ATTACH TO REALIZED PROCEEDS; AMENDING CHAPTER 4, TITLE 14, IDAHO CODE, TO ADD A NEW SECTION TO BE KNOWN AS SECTION 14-418, IDAHO CODE, VESTING ADMINISTRATION OF THE TRANSFER AND INHERITANCE TAX ACT IN THE IDAHO TAX COMMISSION; AMENDING SECTIONS 15-1602, 15-1603, 15-1605, 15-1609, 15-1611, 15-1612, 15-1613, 15-1615, 15-1616, 15-1619 AND 15-1620,
IDAHO CODE, TO CONFORM SAID SECTIONS TO THE UNIFORM PROBATE CODE AND PROVIDING FOR RENUMBERING OF SAID SECTIONS; AMENDING SECTIONS 30-511 AND 30-512, IDAHO CODE, TO CONFORM SAID SECTIONS TO THE UNIFORM PROBATE CODE; AMENDING CHAPTER 9, TITLE 32, IDAHO CODE, TO ADD A NEW SECTION TO BE KNOWN AS SECTION 32-912A, IDAHO CODE, DECLARING THE WIFE TO BE MANAGER OF COMMUNITY PROPERTY IN THE EVENT OF INSANITY OF THE HUSBAND; AMENDING CHAPTER 3, TITLE 66, IDAHO CODE, TO ADD A NEW SECTION TO BE KNOWN AS SECTION 66-360, IDAHO CODE, PROVIDING FOR COMMITMENT OF PERSONS ELIGIBLE FOR CARE OR TREATMENT BY THE VETERANS ADMINISTRATION OR OTHER FEDERAL AGENCY TO SUCH FEDERAL ADMINISTRATION OR AGENCY AND PROVIDING RULES AND PROCEDURES FOR SUCH COMMITMENT; PROVIDING THAT THIS ACT SHALL BE IN FULL FORCE AND EFFECT ON AND AFTER JULY 1, 1972, PROVIDING FOR CERTAIN TRANSITIONAL MATTERS; AND PROVIDING FOR SEVERABILITY.

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

SECTION 1. The comprehensive recodification of the laws of wills, decedents' estates, trusts, guardianships, and non-probate transfers is enacted as follows:

TITLE 15
ARTICLE I
GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT
CHAPTER 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS
15-1-101. SHORT TITLE. — This act shall be known and may be cited as the uniform probate code.
15-1-102. PURPOSES — RULE OF CONSTRUCTION. — (a) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this code are:
(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
(2) to discover and make effective the intent of a decedent in distribution of his property;
(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;
(4) to facilitate use and enforcement of certain trusts;
(5) to make uniform the law among the various jurisdictions.

15-1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

15-1-104. SEVERABILITY. – If any provision of this code or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

15-1-105. CONSTRUCTION AGAINST IMPLIED REPEAL. – This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

15-1-106. EFFECT OF FRAUD AND EVASION. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

15-1-107. EVIDENCE AS TO DEATH OR STATUS. – In proceedings under this code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by this code. In addition, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(b) A certified or authenticated copy of any record or report of a
governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(c) A person who is absent for a continuous period of five (5) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

15-1-108. ACTS BY HOLDER OF GENERAL POWER. — For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all coholders of a presently exercisable general power of appointment, including one (1) in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

CHAPTER 2
DEFINITIONS

15-1-201. GENERAL DEFINITIONS. — Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or chapters, and unless the context otherwise requires, in this code:

(1) “Application” means a written request to the registrar for an order of informal probate or appointment under chapter 3 of article III of this code.

(2) “Augmented estate” means the estate described in section 15-2-202 of this code.

(3) “Beneficiary,” as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(4) “Child” includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(5) “Claims,” in respect to estates of decedents and protected persons,
includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(6) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(9) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(10) "Disability" means cause for a protective order as described by subsection (1) of section 15-5-401 of this code.

(11) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative.

(12) "Emancipated minor" shall mean any male or female who has been married.

(13) "Estate" means all of the property of the decedent, trust, or other person whose affairs are subject to this code as it exists from time to time during administration.

(14) "Exempt property" means that property of a decedent's estate which is described in section 15-2-402 of this code.

(15) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(16) "Foreign personal representative" means a personal representative of another jurisdiction.
(17) "Formal proceedings" mean those conducted before a judge with notice to interested persons.

(18) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(19) "Heirs" mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(20) "Incapacitated person" is as defined in section 15-5-101 of this code.

(21) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(22) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(23) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(24) "Lease" includes an oil, gas, or other mineral lease.

(25) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(26) "Minor" means a male under twenty-one (21) years of age or a female under eighteen (18) years of age.

(27) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(28) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(29) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.
(30) “Parent” includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(31) “Person” means an individual, a corporation, an organization, or other legal entity.

(32) “Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

(33) “Petition” means a written request to the court for an order after notice.

(34) “Proceeding” includes action at law and suit in equity.

(35) “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(36) “Protected person” is as defined in section 15-5-101 of this code.

(37) “Protective proceeding” is as defined in section 15-5-101 of this code.

(38) “Registrar” refers to the clerk of the district court, or the deputy clerk designated by the clerk, who shall perform the functions of registrar as provided in section 15-1-307 of this code.

(39) “Security” includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(40) “Settlement,” in reference to a decedent’s estate, includes the full process of administration, distribution and closing.

(41) “Special administrator” means a personal representative as described by sections 15-3-614 through 15-3-618 of this code.

(42) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(43) “Successor personal representative” means a personal representative, other than a special administrator, who is appointed to
succeed a previously appointed personal representative.

(44) "Successors" mean those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(45) "Supervised administration" refers to the proceedings described in chapter 5, article III, of this code.

(46) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(47) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in article VI of this code, custodial arrangements pursuant to chapter 8, title 68, Idaho Code, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(48) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(49) "Ward" is as defined in section 15-5-101 of this code.

(50) "Will" is a testamentary instrument and includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(51) "Separate property" includes all property of either the husband or the wife owned by him or her before marriage, and that acquired afterward either by gift, bequest, devise or descent, or that which either he or she acquires with proceeds of his or her separate property, by way of monies or other property.

(52) "Community property" includes all other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by the instrument by which any such property is acquired by the wife, it is provided that the rents and profits thereof be applied to her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee.
CHAPTER 3
SCOPE, JURISDICTION AND COURTS
15-1-301. TERRITORIAL APPLICATION. Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, (4) survivorship and related accounts in this state, and (5) trusts subject to administration in this state.

15-1-302. (RESERVED)

15-1-303. VENUE — MULTIPLE PROCEEDINGS TRANSFER. —
(a) Where a proceeding under this code could be maintained in more than one (1) place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, ward or trust are commenced in more than one (1) court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice, a proceeding or file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

15-1-304. (RESERVED)

15-1-305. RECORDS AND CERTIFIED COPIES. The clerk of court shall keep a single file for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.
15-1-305A. RECORDING PERMITTED — EFFECT. Letters of personal representatives (foreign or domestic), a statement of informal probate, probated will, determination of heirship, order made in a testacy proceeding, or will otherwise admissible in evidence as provided in section 15-3-102 of this code; any deed, assignment, release or other instrument executed by an appointed personal representative of the decedent; an affidavit of a successor in interest to property of a decedent; and a decree in any testacy proceeding in another state, any of which affect title to real property, may be recorded in the office of the county recorder of the county in which the real property affected by any such letters, statement, determination, order, document or decree is located. From the time of filing the same for record, notice is imparted to all persons of the contents thereof.

15-1-306. JURY TRIAL. — If duly demanded, a party is entitled to trial by jury in any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

15-1-307. REGISTRAR — POWERS. — The acts and orders which this code specifies as performable by the registrar may be performed by the clerk of the court or the deputy clerk designated by the clerk to perform the duties herein assigned to registrars.

15-1-308. (RESERVED)

15-1-309. (RESERVED)

15-1-310. OATH OR AFFIRMATION ON FILED DOCUMENTS. — Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

15-1-311. EXERCISE OF POWERS. — Powers under this act may be exercised by the court at any time, in chambers or in open court, as may be appropriate. Powers conferred upon the registrar of wills by this act may be exercised at any time.

15-1-312. EXECUTION OF DEED. — Should any persons be entitled to a deed from a personal representative and such personal representative be discharged or disqualified or refuse to execute the same, such deed may be executed by the court authorizing such sale or distribution or the clerk of such court and shall entitle the buyer or distributee to his property.
15-1-401. NOTICE — METHOD AND TIME OF GIVING. — (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(3) if the address, or identity of any person is now known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three (3) consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten (10) days before the time set for the hearing.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made by affidavit or in any other manner permitted by the court at or before the hearing and filed in the proceeding.

15-1-402. NOTICE — WAIVER. — A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. The appearance in court of an interested party is a waiver of notice.

15-1-403. PLEADINGS — WHEN PARTIES BOUND BY OTHERS ... NOTICE. — In judicial proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply: (a) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.
(b) Persons are bound by orders binding others in the following cases:

1. Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one (1) in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

2. To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent and bind his minor child.

3. An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(c) Notice is required as follows:

1. Notice as prescribed by section 15-1-401 of this code shall be given to every interested person or to one who can bind an interested person as described in subsection b(1) or b(2) of this section. Notice may be given both to a person and to another who may bind him.

2. Notice is given to unborn or unascertained persons, who are not represented under subsection b(1) or b(2) of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(d) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.
ARTICLE II
INTESTATE SUCCESSION – WILLS
CHAPTER I
INTESTATE SUCCESSION

15-2-101. INTESTATE ESTATE. – Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

15-2-102. SHARE OF THE SPOUSE. – The intestate share of the surviving spouse is as follows:

(a) As to separate property
   (1) if there is no surviving issue or parent of the decedent, the entire intestate estate;
   (2) if there is no surviving issue but the decedent is survived by a parent or parents, the first fifty thousand dollars ($50,000), plus one-half ($\frac{1}{2}$) of the balance of the intestate estate;
   (3) if there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars ($50,000), plus one-half ($\frac{1}{2}$) of the balance of the intestate estate;
   (4) if there are surviving issue one (1) or more of whom are not issue of the surviving spouse, one-half ($\frac{1}{2}$) of the intestate estate.

(b) As to community property
   (1) the one-half ($\frac{1}{2}$) of community property which belongs to the decedent passes to the surviving spouse.

15-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE. – The part of the intestate estate not passing to the surviving spouse under section 15-2-102 of this chapter, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(b) If there is no surviving issue, to his parent or parents equally;

(c) If there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation;

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one (1) or more grandparents or issue of
grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparents on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

15-2-103A. LIMITATION UPON TESTAMENTARY ABILITY. — The first fifty thousand dollars ($50,000) in unencumbered value of the decedent's share of community property is subject to testamentary disposition only in favor of the survivor, the children, grandchildren, or parents of either spouse or one (1) or more of such persons.

15-2-104. REQUIREMENT THAT HEIR SURVIVE DECEDEANT FOR 120 HOURS. Any person who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty (120) hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 15-2-105 of this chapter.

15-2-105. NO TAKER. — If there is no taker under the provisions of this article, the intestate estate passes to the state of Idaho, subject to administration by the public administrator. After deducting the expenses of administration and causing these to be paid to the county in which such administration occurred, the public administrator shall file the report of abandoned property required by section 14-511, Idaho Code, and proceed to dispose of the property in the manner set forth in the "unclaimed property act", provided, however, that if such money is not claimed within eighteen hundred and twenty-seven (1827) days (approximately five (5) years) from the day upon which such property is paid to the state tax commission, it shall escheat to the state and be apportioned to the public school fund without regard to the provisions of said act.
15-2-106. REPRESENTATION. — If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one (1) share and the share of each deceased person in the same degree being divided among his issue in the same manner.

15-2-107. KINDRED OF HALF BLOOD. — Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

15-2-108. AFTERBORN HEIRS. — Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

15-2-109. MEANING OF CHILD AND RELATED TERMS. — If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(a) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(b) In cases not covered by subsection (a) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(1) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(2) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (2) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

15-2-110. ADVANCEMENTS. — If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter’s share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not
taken into account in computing the intestate share to be received by the recipient’s issue, unless the declaration or acknowledgment provides otherwise. If an advancement exceeds the share of the heir, no refund is required.

15-2-111. DEBTS TO DECEDE NT. - A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor’s issue.

15-2-112. ALIENAGE. - No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

15-2-113. (RESERVED)

CHAPTER 2

ELECTIVE SHARE OF SURVIVING SPOUSE

15-2-201. RIGHT TO ELECTIVE SHARE. - (a) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third (1/3) of the augmented estate under the limitations and conditions hereinafter stated.

(b) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent’s domicile at death.

15-2-202. AUGMENTED ESTATE. - The augmented estate means the separate estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims allocable thereto, to which is added the sum of the following amounts:

(a) The value of separate property transferred by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money’s worth for the transfer, if the transfer is of any of the following types:

(1) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;
(2) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;
(3) any transfer whereby property is held at the time of decedent’s death by decedent and another with right of survivorship;
(4) any transfer made within two (2) years of death of the decedent to
the extent that the aggregate transfers to any one (1) donee in either of
the years exceed three thousand dollars ($3,000).

(b) Any transfer is excluded if made with the written consent or
joinder of the surviving spouse. Property is valued as of the decedent’s death
except that property given irrevocably to a donee during lifetime of the
decedent is valued as of the date the donee came into possession or
enjoyment if that occurs first. Nothing herein shall cause to be included in
the augmented estate any life insurance, accident insurance, joint annuity, or
pension payable to a person other than the surviving spouse.

c) The value of separate property owned by the surviving spouse at
the decedent’s death, plus the value of such property transferred by the
spouse at any time during marriage to any person other than the decedent
which would have been includable in the spouse’s augmented estate if the
surviving spouse had predeceased the decedent, to the extent the owned or
transferred property is derived from the decedent by any means other than
testate or intestate succession without a full consideration in money or
money’s worth. For purposes of this subsection:

(1) Property derived from the decedent includes, but is not limited to,
any beneficial interest of the surviving spouse in a trust created by the
decedent during his lifetime, any property appointed to the spouse by
the decedent’s exercise of a general or special power of appointment
also exercisable in favor of others than the spouse, any proceeds of
insurance (including accidental death benefits) on the life of the
decedent attributable to premiums paid by him, any lump sum
immediately payable and the commuted value of the proceeds of
annuity contracts under which the decedent was the primary annuitant
attributable to premiums paid by him, and the commuted value of
amounts payable after the decedent’s death under any public or private
pension, disability compensation, death benefit or retirement plan,
exclusive of the federal social security system, by reason of service
performed or disabilities incurred by the decedent. Premiums paid by
the decedent’s employer, his partner, a partnership of which he was a
member, or his creditors, are deemed to have been paid by the
decedent.

(2) Property owned by the spouse at the decedent’s death is valued as
of the date of death. Property transferred by the spouse is valued at the
time the transfer became irrevocable, or at the decedent’s death,
whichever occurred first. Income earned by included property prior to the decedent’s death is not treated as property derived from the decedent.

(3) Property owned by the surviving spouse as of the decedent’s death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

(4) Community property owned by the decedent or vested in the surviving spouse is not included; it is intended that the augmented estate and the right of election relating thereto shall incorporate and be applied only to separate property and that interests in community property shall not be included within the estate herein defined or in any way affected by the election provided in this chapter.

15-2-203. RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE. - The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

15-2-204. WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS. - The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of “all rights” (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

15-2-205. PROCEEDING FOR ELECTIVE SHARE - TIME LIMIT. - (a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative a petition for the elective share within six (6) months
after the publication of notice to creditors for filing claims which arose before the death of the decedent. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 15-2-207 of this chapter. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

15-2-206. EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE. — (a) The surviving spouse’s election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent’s will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection (b) of section 15-2-207 of this chapter, as if the surviving spouse had predeceased the testator.

(b) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by
the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.

15-2-207. CHARGING SPOUSE WITH GIFTS RECEIVED — LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE. —
(a) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in subsection (3) of section 15-2-202 of this chapter, is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(b) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

CHAPTER 3
SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS
15-2-301. OMITTED SPOUSE. — (a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in section 15-3-902 of this code.

15-2-302. PRETERMITTED CHILDREN. — (a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:
(1) it appears from the will that the omission was intentional;
(2) when the will was executed the testator had one (1) or more
children and devised substantially all his estate to the other parent of
the omitted child; or
(3) the testator provided for the child by transfer outside the will and
the intent that the transfer be in lieu of a testamentary provision is
shown by statements of the testator or from the amount of the transfer
or other evidence.

(b) If at the time of execution of the will the testator fails to provide
in his will for a living child unless the omission was intentional or the result
of belief in the child’s death, the child receives a share in the estate equal in
value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by
the will abate as provided in section 15-3-902 of this code.

CHAPTER 4

EXEMPT PROPERTY AND ALLOWANCES

15-2-401. HOMESTEAD ALLOWANCE. — If no homestead has been
selected during life and set aside, a surviving spouse of a decedent who was
domiciled in this state is entitled to a homestead allowance of five thousand
dollars ($5,000). If there is no surviving spouse, each minor child and each
dependent child of the decedent is entitled to a homestead allowance
amounting to five thousand dollars ($5,000) divided by the number of minor
and dependent children of the decedent if the same condition exists. The
homestead allowance is exempt from and has priority over all claims against
the estate. Homestead allowance is in addition to any share passing to the
surviving spouse or minor or dependent child by the will of the decedent
unless otherwise provided, by intestate succession or by way of elective
share.

15-2-402. EXEMPT PROPERTY. — In addition to the homestead
allowance, the surviving spouse of a decedent who was domiciled in this state
is entitled from the estate to value not exceeding three thousand five
hundred dollars ($3,500) in excess of any security interests therein in
household furniture, automobiles, furnishings, appliances and personal
effects. If there is no surviving spouse, children of the decedent are entitled
jointly to the same value. If encumbered chattels are selected and if the value
in excess of security interests, plus that of other exempt property, is less
than three thousand five hundred dollars ($3,500), or if there is not three
thousand five hundred dollars ($3,500) worth of exempt property in the
estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the three thousand five hundred dollar ($3,500) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

15-2-403. FAMILY ALLOWANCE. – In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

15-2-404. SOURCE DETERMINATION DOCUMENTATION. – If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor
children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding six thousand dollars ($6,000) or periodic installments not exceeding five hundred dollars ($500) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

CHAPTER 5
WILLS

15-2-501. WHO MAY MAKE A WILL. — Any emancipated minor or any person eighteen (18) or more years of age who is of sound mind may make a will. A married woman may dispose of her property, whether separate or community, in the same manner as any other person subject to the restrictions imposed by this code.

15-2-502. EXECUTION. — Except as provided for holographic wills, writings within section 15-2-513 of this chapter, and wills within section 15-2-506 of this chapter, every will shall be in writing signed by the testator or in the testator’s name by some other person in the testator’s presence and by his direction, and shall be signed by at least two (2) persons each of whom witnessed either the signing or the testator’s acknowledgment of the signature or of the will.

15-2-503. HOLOGRAPHIC WILL. — A will which does not comply with section 15-2-502 of this chapter is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

15-2-504. SELF-PROVED WILLS. — An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer’s certificate, under official seal, attached or annexed to the will in form and content substantially as follows:
THE STATE OF
COUNTY OF

We, __________, __________, and __________, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time an adult, of sound mind and under no constraint or undue influence.

________________________________________
Testator

________________________________________
Witness

________________________________________
Witness

Subscribed, sworn to and acknowledged before me by __________, the testator, and subscribed and sworn to before me by __________ and __________, witnesses, this _______ day of _______.

(SEAL) (Signed)

(Official capacity of officer)

15-2-505. WHO MAY WITNESS. — (a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.
15-2-506. CHOICE OF LAW AS TO EXECUTION. — A written will is valid if executed in compliance with section 15-2-502 or 15-2-503 of this chapter or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

15-2-507. REVOCATION BY WRITING OR BY ACT. — A will or any part thereof is revoked:

(a) By a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(b) By being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

(c) The revocation of a will executed in duplicate may be accomplished by revoking one (1) of the duplicates.

15-2-508. REVOCATION BY DIVORCE — NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES. — If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of subsection (b) of section 15-2-802 of this code. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

15-2-509. REVIVAL OF REVOKED WILL. — (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 15-2-507 of this chapter, the first will is revoked in whole or in part unless it is evident
from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

(c) Republication of a revoked will revives such will.

15-2-510. INCORPORATION BY REFERENCE. — Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

15-2-511. TESTAMENTARY ADDITIONS TO TRUSTS. — A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

15-2-512. EVENTS OF INDEPENDENT SIGNIFICANCE. — A will may dispose of property by reference to acts and events which have
significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator’s death. The execution or revocation of a will of another person is such an event.

15-2-513. SEPARATE WRITING IDENTIFYING BEQUEST OF TANGIBLE PROPERTY. – Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator’s death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

CHAPTER 6
RULES OF CONSTRUCTION

15-2-601. REQUIREMENT THAT DEVISEE SURVIVE TESTATOR BY 120 HOURS. – A devisee who does not survive the testator by one hundred twenty (120) hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

15-2-602. CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS. – The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

15-2-603. RULES OF CONSTRUCTION AND INTENTION. – The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this chapter apply unless a contrary intention is indicated by the will.

15-2-604. CONSTRUCTION THAT WILL PASSES ALL PROPERTY AFTER-ACQUIRED PROPERTY. – A will is construed to pass all
property which the testator owns at his death including property acquired after the execution of the will.

15-2-605. ANTI-LAPSE — DECEASED DEVISEE — CLASS GIFTS. — If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty (120) hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

15-2-606. FAILURE OF TESTAMENTARY PROVISION. — (a) Except as provided in section 15-2-605 of this chapter, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in section 15-2-605 of this chapter, if the residue is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

15-2-607. CHANGE IN SECURITIES ACCESSIONS NON AD EMINPTION. — (a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

1. as much of the devised securities as is a part of the estate at the time of the testator’s death;
2. any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;
3. securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and
4. any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) of this section are not part of the specific devisee.
15-2-608. NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES — SALE BY CONSERVATOR — UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE. (a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one (1) year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b) of this section.

(b) A specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;
(2) any amount of a condemnation award for the taking of the property unpaid at death;
(3) any proceeds unpaid at death on fire or casualty insurance on the property; and
(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

15-2-609. NON-EXONERATION. — A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

15-2-610. EXERCISE OF POWER OF APPOINTMENT. — A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

15-2-611. CONSTRUCTION OF GENERIC TERMS TO ACCORD WITH RELATIONSHIPS AS DEFINED FOR INTESTATE SUCCESSION. 

Half bloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.
15-2-612. ADEMPTION BY SATISFACTION. — Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

15-2-613. SIMULTANEOUS DEATH DISPOSITION OF PROPERTY. — Subject to extension by the provisions of section 15-2-104 and section 15-2-601 of this code, where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be distributed as if he had survived, except as otherwise provided in this section.

(a) Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's distribution of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(b) Where there is no sufficient evidence that two (2) joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half (½) as if one had survived and one-half (½) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(c) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(d) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, wherein provision has been made for distribution of property different from the provisions of the section.

(e) This section shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

(f) This section may be cited as the “uniform simultaneous death act”.

15-2-614. EFFECT OF DEVISE. — Every devise in any will conveys all of the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that he intended to convey a lesser estate.

15-2-615. RESTRICTION ON CHARITABLE DEVISES. — (a) No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty (30) days before the decease of the testator; and if so made at least thirty (30) days prior to such death, such devise or legacy, and each of them, shall be valid; provided that, except as hereinafter provided for, no such devises or bequests shall collectively exceed one-third (1/3) of the estate of the testator leaving lineal descendants, and in such case, subject to the limitation hereinafter provided for, a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third (1/3) of such estate; and all dispositions of property made contrary hereto shall be void, except as hereinafter otherwise provided, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

(b) In any case where property, wherever situated, having an aggregate appraised value of one hundred thousand dollars ($100,000), or more, shall be distributable to any lineal descendant or descendants of a testator pursuant to any specific or residuary devise or bequest to any such descendant or descendants, then bequests or devises, in any amount, made by such testator to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses contained in a will executed at least thirty (30) days before his death shall be valid without regard to the one-third (1/3) limitation herein otherwise imposed.

(c) And in any case where as the result of making any pro rata deduction from such devises or bequests as herein required property, wherever situated, having an aggregate appraised value of one hundred thousand dollars ($100,000) shall thereby become distributable to a residuary legatee or devisee, next of kin, or heirs, according to law, no further deduction shall be required and the remainder of such devises or bequests to any charitable or benevolent society or corporation or to any person or persons in trust for charitable uses, in any amount, shall be valid without regard to the one-third (1/3) limitation herein otherwise imposed.

(d) This section shall in no way limit or affect the surviving spouse's election provided by sections 15-2-201 through 15-2-207 of this code.
CHAPTER 7
CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

15-2-701. CONTRACTS CONCERNING SUCCESSION. — A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

CHAPTER 8
GENERAL PROVISIONS

15-2-801. RENUNCIATION OF SUCCESSION. — (a) A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall: (1) describe the property or part thereof or interest therein renounced, (2) be signed by the person renouncing and (3) declare the renunciation and the extent thereof.

(b) The writing specified in subsection (a) of this section must be filed within six (6) months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than six (6) months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent’s estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

(c) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.
(d) Any assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor; written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument; or sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(e) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(f) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(g) Any interest in property which exists on the effective date of this section, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after the effective date of this section as provided herein. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

15-2-802. EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION. (a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of chapters 1, 2, 3 and 4 of this article, a surviving spouse does not include:

(1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(2) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.
15-2-803. EFFECT OF HOMICIDE ON DISTRIBUTION AT DEATH.  
- (a) (1) "Slayer" shall mean any person who participates, either as principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.
   (2) "Decedent" shall mean any person whose life is so taken.
   (3) "Property" shall include any real and personal property and any right or interest therein.

   (b) No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.

   (c) The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent.

   (d) Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

   (e) One-half (1/2) of any community property which would have passed to or for the benefit of the slayer by devise, legacy or intestate succession from the decedent shall be distributed as if he had predeceased the decedent.

   (f) Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

   (g) Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

   (h) As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

      (1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.
(2) In any case the interest shall not be vested or increased during period of the life expectancy of the decedent.

(i) (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer.

(j) (1) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

(k) Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer.

(l) The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice, property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be
held by him in trust for the persons entitled to the property under the
provisions of this chapter, and the slayer shall also be liable both for any
portion of such proceeds which he may have dissipated and for any
difference between the actual value of the property and the amount of such
proceeds.

(m) The record of his conviction of having participated in the wilful
and unlawful killing of the decedent shall be admissible in evidence against a
claimant of property in any civil action arising under this chapter.

(n) This section shall not be considered penal in nature, but shall be
construed broadly in order to effect the policy of this state that no person
shall be allowed to profit by his own wrong, wherever committed.

CHAPTER 9
CUSTODY AND DEPOSIT OF WILLS
15-2-901. (RESERVED)
15-2-902. DUTY OF CUSTODIAN OF WILL — LIABILITY. — After
the death of the testator, any person having custody of a will of the testator
shall deliver it with reasonable promptness to a person able to secure its
probate and if none is known, to an appropriate court. Any person who
willfully fails to deliver a will is liable to any person aggrieved for the
damages which may be sustained by the failure. Any person who willfully
refuses or fails to deliver a will after being ordered by the court in a
proceeding brought for the purpose of compelling delivery is subject to
penalty for contempt of court.

ARTICLE III
PROBATE OF WILLS AND
ADMINISTRATION
CHAPTER 1
GENERAL PROVISIONS
15-3-101. DEVOLUTION OF ESTATE AT DEATH —
RESTRICTIONS. — The power of a person to leave property by will, and
the rights of creditors, devisees, and heirs to his property are subject to the
restrictions and limitations contained in this code to facilitate the prompt
settlement of estates. Upon the death of a person, his separate property
develops to the persons to whom it is devised by his last will, or to those
indicated as substitutes for them in cases involving lapse, renunciation or
other circumstances affecting the devolution of testate estates, or in the
absence of testamentary disposition to his heirs, or to those indicated as
substitutes for them in cases involving renunciation or other circumstances
affecting the devolution of intestate estates, and upon the death of a husband or wife, the decedent's share of their community property devolves to the persons to whom it is devised by his last will, or in the absence of testamentary disposition, to the surviving spouse, but all of their community property which is under the management and control of the decedent is subject to his debts and administration, and that portion of their community property which is not under the management and control of the decedent but which is necessary to carry out the provisions of his will is subject to administration; but the devolution of all the above described property is subject to rights to homestead allowance, exempt property and family allowances, to renunciation to rights of creditors, elective share of the surviving spouse and to administration.

15-3-102. NECESSITY OF ORDER OF PROBATE FOR WILL. — Except as provided in section 15-3-1201 of this code, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

15-3-103. NECESSITY OF APPOINTMENT FOR ADMINISTRATION. — Except as otherwise provided in article IV of this code, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

15-3-104. CLAIMS AGAINST DECEDED — NECESSITY OF ADMINISTRATION. — No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 15-3-1004 of this code or from a former personal
representative individually liable as provided in section 15-3-1005 of this code. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

15-3-105. PROCEEDINGS AFFECTING DEVOLUTION AND ADMINISTRATION — JURISDICTION OF SUBJECT MATTER. — Persons interested in decedents’ estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court’s jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents’ estates subject to the laws of this state are to be administered, expended and distributed.

15-3-106. CIVIL LITIGATION — NOTICE. — Subject to general rules concerning the proper location of civil litigation and jurisdiction of persons, the court may herein determine any other controversy concerning a succession or to which an estate, through a personal representative, may be a party. Persons notified are bound though less than all interested persons may have been given notice.

15-3-107. SCOPE OF PROCEEDINGS — PROCEEDINGS INDEPENDENT — EXCEPTION. — Unless supervised administration as described in chapter 5, article III, of this code is involved, (1) each proceeding before the court or registrar is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

15-3-108. PROBATE TESTACY AND APPOINTMENT PROCEEDINGS — ULTIMATE TIME LIMIT. — No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator’s domicile and appointment proceedings relating to an estate in which there
has been a prior appointment, may be commenced more than three (3) years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three (3) years after the conservator becomes able to establish the death of the protected person; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve (12) months from the informal probate or three (3) years from the decedent's death. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

15-3-109. STATUTES OF LIMITATION ON DECEDE NT'S CAUSE OF ACTION. — No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four (4) months after death. A cause of action which, but for this section, would have been barred less than four (4) months after death, is barred after four (4) months unless tolled.

15-3-110. DELIVERY OF WILL. — Every custodian of a will, within thirty (30) days after receipt of information that the maker thereof is dead, must deliver the same to the court having jurisdiction of the estate or to the personal representative named therein. A person failing to make such delivery shall be responsible for all damages sustained by anyone injured thereby.

CHAPTER 2
VENUE FOR PROBATE AND ADMINISTRATION

PRIORITY TO ADMINISTER — DEMAND FOR NOTICE

15-3-201. VENUE FOR FIRST AND SUBSEQUENT ESTATE
PROCEEDINGS – LOCATION OF PROPERTY. (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent’s death is:

1. in the county where the decedent had his domicile at the time of his death; or
2. if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 15-1-303 of this code or subsection (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

15-3-202. APPOINTMENT OR TESTACY PROCEEDINGS - CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE. - If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

15-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE. (a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

1. the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
(2) the surviving spouse of the decedent who is a devisee of the decedent;
(3) other devisees of the decedent;
(4) the surviving spouse of the decedent;
(5) other heirs of the decedent;
(6) forty-five (45) days after the death of the decedent, any creditor;
(7) if a petition for appointment of a personal representative has been filed and sixty (60) days have elapsed during which no consent to act has been filed by any proper person, the public administrator shall act as personal representative unless and until a proper person consents to act.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection (a) of this section apply except that

(1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(c) A person entitled to letters under (2) through (5) of subsection (a) of this section, and a person aged eighteen (18) and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged eighteen (18) and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two (2) or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.
(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

1. under the age of twenty-one (21);
2. a person whom the court finds unsuitable in formal proceedings.

(g) A personal representative appointed by a court of the decedent’s domicile has priority over all other persons except where the decedent’s will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

(i) A married woman shall have the right to serve as personal representative.

15-3-204. DEMAND FOR NOTICE OF ORDER OR FILING CONCERNING DECEDED’S ESTATE. — Any person desiring notice of any order or filing pertaining to a decedent’s estate in which he has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant’s address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 15-1-401 of this code to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.
CHAPTER 3
INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

15-3-301. INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS — APPLICATION — CONTENTS. — Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(a) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary or successor representative, shall contain the following:

(1) a statement of the interest of the applicant;

(2) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(b) An application for informal probate of a will shall state the following in addition to the statements required by subsection (a) of this section:

(1) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(2) that the applicant, to the best of his knowledge, believes the will to have been validly executed;

(3) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;
(4) that the time limit for informal probate as provided in this article has not expired either because three (3) years or less have passed since the decedent’s death, or, if more than three (3) years from death have passed, that circumstances as described by section 15-3-108 of this code authorizing tardy probate have occurred.

(c) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(d) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by subsection (a) of this section:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 15-1-301 of this code, or, a statement why any such instrument of which he may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 15-3-203 of this code.

(e) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(f) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection (c) of section 15-3-610 of this code, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

15-3-302. INFORMAL PROBATE — DUTY OF REGISTRAR —
EFFECT OF INFORMAL PROBATE. — Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 15-3-303 of this chapter shall issue a written statement of informal probate if at least one hundred twenty (120) hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testamentary proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

15-3-303. INFORMAL PROBATE — PROOF AND FINDINGS REQUIRED. — (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;
(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
(3) the applicant appears from the application to be an interested person as defined in subsection (22) of section 15-1-201 of this code;
(4) on the basis of the statements in the application, venue is proper;
(5) an original, duly executed and apparently unrevoked will is in the registrar's possession;
(6) any notice required by section 15-3-204 of this code has been given and that the application is not within section 15-3-304 of this chapter; and
(7) it appears from the application that the time limit for original probate has not expired.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (d) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 15-2-502, 15-2-503 or 15-2-506 of this code have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated
elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) of this section, may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

15-3-304. INFORMAL PROBATE — UNAVAILABLE IN CERTAIN CASES. — Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

15-3-305. INFORMAL PROBATE — REGISTRAR NOT SATISFIED. — If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 15-3-303 and 15-3-304 of this chapter or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

15-3-306. INFORMAL PROBATE — NOTICE REQUIREMENTS. — The moving party must give notice as described by section 15-1-401 of this code of his application for informal probate (1) to any person demanding it pursuant to section 15-3-204 of this code; and (2) to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

15-3-307. INFORMAL APPOINTMENT PROCEEDINGS — DELAY IN ORDER — DUTY OF REGISTRAR — EFFECT OF APPOINTMENT. — (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 15-3-614 of this code, if at least one hundred twenty (120) hours have elapsed since the decedent's death, the registrar, after making the findings required by section 15-3-308 of this chapter, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a non-resident, the registrar shall delay the order of appointment until thirty (30) days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.
(b) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 15-3-608 through 15-3-612 of this code, but is not subject to retroactive vacation.

15-3-308. INFORMAL APPOINTMENT PROCEEDINGS — PROOF AND FINDINGS REQUIRED. — (a) In informal appointment proceedings, the registrar must determine whether:

1. the application for informal appointment of a personal representative is complete;
2. the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
3. the applicant appears from the application to be an interested person as defined in subsection (22) of section 15-1-201 of this code;
4. on the basis of the statements in the application, venue is proper;
5. any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
6. any notice required by section 15-3-204 of this code has been given;
7. from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(b) Unless section 15-3-612 of this code controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in subsection (c) of section 15-3-610 of this code has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

15-3-309. INFORMAL APPOINTMENT PROCEEDINGS — REGISTRAR NOT SATISFIED. — If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 15-3-307 and 15-3-308 of this chapter, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.
15-3-310. INFORMAL APPOINTMENT PROCEEDINGS – NOTICE REQUIREMENTS. – The moving party must give notice as described by section 15-1-401 of this code of his intention to seek an appointment informally: (1) to any person demanding it pursuant to section 15-3-204 of this code; and (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

15-3-311. INFORMAL APPOINTMENT UNAVAILABLE IN CERTAIN CASES. – If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the registrar shall decline the application.

CHAPTER 4
FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

15-3-401. FORMAL TESTACY PROCEEDINGS – NATURE – WHEN COMMENCED. – A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in subsection (a) of section 15-3-402 of this chapter in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with subsection (b) of section 15-3-402 of this chapter for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal
proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

15-3-402. FORMAL TESTACY OR APPOINTMENT PROCEEDINGS — PETITION — CONTENTS. — (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will:

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(2) contains the statements required for informal applications as stated in subsection (a)(1) through (5) of section 15-3-301 of this code, the statements required by subsection (b)(1) and (2) of section 15-3-301 of this code; and

(3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

(b) If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(c) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by subsection (a) and (d) of section 15-3-301 of this code and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subsection (d)(2) of section 15-3-301 of this code may be omitted.

15-3-403. FORMAL TESTACY PROCEEDING — NOTICE OF HEARING ON PETITION. — (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be
given in the manner prescribed by section 15-1-401 of this code by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 15-3-204 of this code.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in one (1) or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;
(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;
(3) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

15-3-404. FORMAL TESTACY PROCEEDINGS — WRITTEN OBJECTIONS TO PROBATE. — Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

15-3-405. FORMAL TESTACY PROCEEDINGS — UNCONTESTED CASES — HEARINGS AND PROOF. — If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 15-3-409 of this chapter have been met, or conduct a hearing in open court and require proof
of the matters necessary to support the order sought. If evidence concerning
execution of the will is necessary, the affidavit or testimony of one (1) of
any attesting witnesses to the instrument is sufficient. If the affidavit or
testimony of an attesting witness is not available, execution of the will may
be proved by other evidence or affidavit.

15-3-406. FORMAL TESTACY PROCEEDINGS — CONTESTED
CASES — TESTIMONY OF ATTESTING WITNESSES. — (a) If evidence
concerning execution of an attested will which is not self-proved is necessary
in contested cases, the testimony of at least one (1) of the attesting
witnesses, if within the state competent and able to testify, is required. Due
execution of an attested or unattested will may be proved by other evidence.

(b) If the will is self-proved, compliance with signature requirements
for execution is conclusively presumed and other requirements of execution
are presumed subject to rebuttal without the testimony of any witness upon
filing the will and the acknowledgment and affidavits annexed or attached
thereto, unless there is proof of fraud or forgery affecting the
acknowledgment or affidavit.

15-3-407. FORMAL TESTACY PROCEEDINGS — BURDENS IN
CONTESTED CASES. — In contested cases, petitioners who seek to
establish intestacy have the burden of establishing prima facie proof of
death, venue, and heirship. Proponents of a will have the burden of
establishing prima facie proof of due execution in all cases, and, if they are
also petitioners, prima facie proof of death and venue. Contestants of a will
have the burden of establishing lack of testamentary intent or capacity,
undue influence, fraud, duress, mistake or revocation. Parties have the
ultimate burden of persuasion as to matters with respect to which they have
the initial burden of proof. If a will is opposed by the petition for probate of
a later will revoking the former, it shall be determined first whether the later
will is entitled to probate, and if a will is opposed by a petition for a
declaration of intestacy, it shall be determined first whether the will is
entitled to probate.

15-3-408. FORMAL TESTACY PROCEEDINGS — WILL
CONSTRUCTION — EFFECT OF FINAL ORDER IN ANOTHER
JURISDICTION. — A final order of a court of another state determining
testacy, the validity or construction of a will, made in a proceeding involving
notice to and an opportunity for contest by all interested persons must be
accepted as determinative by the courts of this state if it includes, or is based
upon, a finding that the decedent was domiciled at his death in the state
where the order was made.
15-3-409. FORMAL TESTACY PROCEEDINGS — ORDER — FOREIGN WILL. — After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 15-3-108 of this code, it shall determine the decedent’s domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 15-3-612 of this code. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place. When a lost will is established, the provisions thereof must be found by the court and the findings filed and recorded as other wills are filed and recorded.

15-3-410. FORMAL TESTACY PROCEEDINGS — PROBATE OF MORE THAN ONE INSTRUMENT. — If two (2) or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one (1) instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one (1) instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 15-3-412 of this chapter.

15-3-411. FORMAL TESTACY PROCEEDINGS — PARTIAL INTESTACY. — If it becomes evident in the course of a formal testacy proceeding that, though one (1) or more instruments are entitled to be probated, the decedent’s estate is or may be partially intestate, the court shall enter an order to that effect.

15-3-412. FORMAL TESTACY PROCEEDINGS — EFFECT OF ORDER — VACATION. — Subject to appeal and subject to vacation as
provided herein and in section 15-3-413 of this chapter, a formal testacy order under sections 15-3-409 through 15-3-411 of this chapter, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(a) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(b) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one (1) or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(c) A petition for vacation under either subsection (a) or (b) of this section must be filed prior to the earlier of the following time limits:

1. if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six (6) months after the filing of the closing statement.
2. whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 15-3-108 of this code when it is no longer possible to initiate an original proceeding to probate a will of the decedent.
3. twelve (12) months after the entry of the order sought to be vacated.

(d) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(e) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under subsection (b) of section 15-3-403 of this chapter was made.
If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

15-3-413. FORMAL TESTACY PROCEEDINGS - VACATION OF ORDER FOR OTHER CAUSE. — For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

15-3-414. FORMAL PROCEEDINGS CONCERNING APPOINTMENT OF PERSONAL REPRESENTATIVE. — (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 15-3-402 of this chapter, as well as by this section. In other cases, the petition shall contain or adopt the statements required by subsection (a) of section 15-3-301 of this code and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 15-3-203 of this code, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 15-3-611 of this code.
CHAPTER 5
SUPERVISED ADMINISTRATION

15-3-501. SUPERVISED ADMINISTRATION — NATURE OF PROCEEDING. — Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent’s estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this chapter, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

15-3-502. SUPERVISED ADMINISTRATION — PETITION — ORDER. — A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent’s estate: (1) if the decedent’s will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent’s will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that supervised administration is necessary under the circumstances.

15-3-503. SUPERVISED ADMINISTRATION — EFFECT ON OTHER
PROCEEDINGS. — (a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 15-3-401 of this code.

(c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

15-3-504. SUPERVISED ADMINISTRATION — POWERS OF PERSONAL REPRESENTATIVE. — Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

15-3-505. SUPERVISED ADMINISTRATION — INTERIM ORDERS — DISTRIBUTION AND CLOSING ORDERS. — Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 15-3-1001 of this code. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

CHAPTER 6
PERSONAL REPRESENTATIVE — APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

15-3-601. QUALIFICATION. — Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office. In his statement of acceptance, the personal representative shall subscribe an oath to the effect that he will perform the duties of his office according to the law.

15-3-602. ACCEPTANCE OF APPOINTMENT — CONSENT TO
JURISDICTION. — By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

15-3-603. BOND NOT REQUIRED WITHOUT COURT ORDER — EXCEPTIONS. No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or (3) when bond is required under section 15-3-605 of this chapter. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties. No bond will be required of any domestic bank or trust company.

15-3-604. BOND AMOUNT — SECURITY — PROCEDURE — REDUCTION. — If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registrar, or give other suitable security, in an amount not less than the estimate. The registrar shall determine that the bond is duly executed by a corporate surety, or one (1) or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 15-6-101 of this code) in a manner that
prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

15-3-605. DEMAND FOR BOND BY INTERESTED PERSON. — Any person apparently having an interest in the estate worth in excess of one thousand dollars ($1,000), or any creditor having a claim in excess of one thousand dollars ($1,000), may make a written demand that a personal representative give bond. The demand must be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 15-3-603 or 15-3-604 of this chapter. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty (30) days after receipt of notice is cause for his removal and appointment of a successor personal representative.

15-3-606. TERMS AND CONDITIONS OF BONDS. — (a) The following requirements and provisions apply to any bond required by this chapter:

(1) Bonds shall name the state of Idaho as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.
(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as then known to the petitioner.
(4) On petition of a successor personal representative, any other
personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

15-3-607. ORDER RESTRAINING PERSONAL REPRESENTATIVE.
- (a) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within ten (10) days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

(c) If any person is suspected of having concealed, embezzled, or smuggled, laid away or disposed of any monies, goods, or chattels of the decedent or to have in his possession or subject to his knowledge, any deeds, conveyances, bonds, contracts, or other writings, or any personal estate, or any other claim or demand or any last will of the decedent, such person may be ordered to appear, examined on oath and held to account upon such matters.

15-3-608. TERMINATION OF APPOINTMENT — GENERAL.
- Termination of appointment of a personal representative occurs as indicated in sections 15-3-609 through 15-3-612, inclusive, of this chapter. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does
not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

15-3-609. TERMINATION OF APPOINTMENT — DEATH OR DISABILITY. — The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

15-3-610. TERMINATION OF APPOINTMENT — VOLUNTARY. — (a) An appointment of a personal representative terminates as provided in section 15-3-1003 of this code, one (1) year after the filing of a closing statement.

(b) An order closing an estate as provided in section 15-3-1001 or 15-3-1002 of this code terminates an appointment of a personal representative.

(c) A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least fifteen (15) days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

15-3-611. TERMINATION OF APPOINTMENT BY REMOVAL — CAUSE — PROCEDURE. — (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in
section 15-3-607 of this chapter, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

15-3-612. TERMINATION OF APPOINTMENT — CHANGE OF TESTACY STATUS. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 15-3-401 of this code. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty (30) days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

15-3-613. SUCCESSOR PERSONAL REPRESENTATIVE. — Chapters 3 and 4 of this article govern proceedings for appointment of a personal representative to succeed one (1) whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given
or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

15-3-614. SPECIAL ADMINISTRATOR — APPOINTMENT. — A special administrator may be appointed:

(a) Informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 15-3-609 of this chapter;

(b) In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

15-3-615. SPECIAL ADMINISTRATOR — WHO MAY BE APPOINTED. — (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(b) In other cases, any proper person may be appointed special administrator.

15-3-616. SPECIAL ADMINISTRATOR — APPOINTED INFORMALLY — POWERS AND DUTIES. — A special administrator appointed by the registrar in informal proceedings pursuant to subsection (a) of section 15-3-614 of this chapter has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under this code necessary to perform his duties.

15-3-617. SPECIAL ADMINISTRATOR — FORMAL PROCEEDINGS — POWERS AND DUTIES. — A special administrator appointed by order of the court in any formal proceeding has the power of a general personal
representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

15-3-618. TERMINATION OF APPOINTMENT SPECIAL ADMINISTRATOR. — The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 15-3-608 through 15-3-611 of this chapter.

CHAPTER 7
DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

15-3-701. TIME OF ACCRUAL OF DUTIES AND POWERS. — Duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

15-3-702. PRIORITY AMONG DIFFERENT LETTERS. — A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

15-3-703. GENERAL DUTIES — RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE — STANDING TO SUE. — (a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-7-302 of this code. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of
administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

15-3-704. PERSONAL REPRESENTATIVE TO PROCEED WITHOUT COURT ORDER — EXCEPTION. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

15-3-705. DUTY OF PERSONAL REPRESENTATIVE — INFORMATION TO HEIRS AND DEVISEES. Not later than thirty (30) days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a
prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

15-3-706. DUTY OF PERSONAL REPRESENTATIVE — INVENTORY AND APPRAISEMENT. — Within three (3) months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to interested persons, or he may file the original of the inventory with the court.

15-3-707. EMPLOYMENT OF APPRAISERS. — The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

15-3-708. DUTY OF PERSONAL REPRESENTATIVE — SUPPLEMENTARY INVENTORY. — If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof.
or information thereof to persons interested in the new information.

15-3-709. DUTY OF PERSONAL REPRESENTATIVE – POSSESSION OF ESTATE. — Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

15-3-710. POWER TO AVOID TRANSFERS. — The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors who must pay or secure the cost and expenses of litigation.

15-3-711. POWERS OF PERSONAL REPRESENTATIVES – IN GENERAL. — Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

15-3-712. IMPROPER EXERCISE OF POWER – BREACH OF FIDUCIARY DUTY. — If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 15-3-713 and 15-3-714 of this chapter.

15-3-713. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING
CONFLICT OF INTEREST — VOIDABLE — EXCEPTIONS. — Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one (1) who has consented after fair disclosure, unless:

(a) the will or a contract entered into by the decedent expressly authorized the transaction; or

(b) the transaction is approved by the court after notice to interested persons.

15-3-714. PERSONS DEALING WITH PERSONAL REPRESENTATIVE — PROTECTION. — A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 15-3-504 of this code, and without regard to the constructive notice provisions of section 15-1-305A of this code, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

15-3-715. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES — EXCEPTIONS. — Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 15-3-902 of this code, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
(2) Receive assets from fiduciaries, or other sources;

(3) Exercise the same power as the decedent in performance, compromise or refusal to perform the decedent's contracts which continue as obligations of the decedent's estate. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) Make ordinary or extraordinary repairs or alterations in building or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) Enter into a lease or arrangement for exploration and removal of
minerals or other natural resources or enter into a pooling or unitization agreement;

(11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) Vote stocks or other securities in person or by general or limited proxy;

(13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent
investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death (a) in the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) Incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) Satisfy and settle claims and distribute the estate as provided in this code.

15-3-716. POWERS AND DUTIES OF SUCCESSOR PERSONAL REPRESENTATIVE. - A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

15-3-717. COREPRESENTATIVES — WHEN JOINT ACTION REQUIRED. — If two (2) or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of a majority is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot
readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

15-3-718. POWERS OF SURVIVING PERSONAL REPRESENTATIVE. — Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one (1) or more remaining after the appointment of one (1) or more is terminated, and if one (1) of two (2) or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

15-3-719. COMPENSATION OF PERSONAL REPRESENTATIVE. — A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative may also renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

15-3-720. EXPENSES IN ESTATE LITIGATION. — If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.

15-3-721. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND EMPLOYEES OF ESTATE. — After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received
excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

CHAPTER 8
CREDITORS' CLAIMS

15-3-801. NOTICE TO CREDITORS. — Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three (3) successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within four (4) months after the date of the first publication of the notice or be forever barred.

15-3-802. STATUTES OF LIMITATIONS. — Unless an estate is insolvent, the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the four (4) months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 15-3-804 of this chapter is equivalent to commencement of a proceeding on the claim.

15-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS. — (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representatives, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 15-3-801 of this chapter; provided, claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.

(2) within three (3) years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the
death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(2) any other claim, within four (4) months after it arises.

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

15-3-804. MANNER OF PRESENTATION OF CLAIMS. — Claims against a decedent’s estate may be presented as follows:

(a) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur on receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(c) If a claim is presented under subsection (a) of this section, no proceeding thereon may be commenced more than sixty (60) days after the
personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty (60) day period, or to avoid injustice the court, on petition, may order an extension of the sixty (60) day period, but in no event shall the extension run beyond the applicable statute of limitations.

15-3-805. CLASSIFICATION OF CLAIMS. — (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration;
(2) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
(3) debts and taxes with preference under federal law or the laws of this state;
(4) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

15-3-806. ALLOWANCE OF CLAIMS. — (a) As to claims presented in the manner described in section 15-3-804 of this chapter within the time limit prescribed in 15-3-803 of this chapter, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any
claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent’s estate is an allowance of the claim.

(d) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty (60) days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

15-3-807. PAYMENT OF CLAIMS. (a) Upon the expiration of four (4) months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(b) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(1) the payment was made before the expiration of the time limit stated in subsection (a) of this section and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

15-3-808. INDIVIDUAL LIABILITY OF PERSONAL
REPRESENTATIVE. — (a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

15-3-809. SECURED CLAIMS. — Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(a) If the creditor exhausts his security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or

(b) If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

15-3-810. CLAIMS NOT DUE AND CONTINGENT OR UNLIQUIDATED CLAIMS. — (a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:
(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

15-3-811. COUNTERCLAIMS. — In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

15-3-812. EXECUTION AND LEVIES PROHIBITED. — No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

15-3-813. COMPROMISE OF CLAIMS. — When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

15-3-814. ENCUMBERED ASSETS. — If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

15-3-815. ADMINISTRATION IN MORE THAN ONE STATE — DUTY OF PERSONAL REPRESENTATIVE. — (a) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.
(b) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

15-3-816. FINAL DISTRIBUTION TO DOMICILIARY REPRESENTATIVE. — The estate of a non-resident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile; (2) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under section 15-3-1001 of this code or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other chapters of this article.

15-3-817. COMMUNITY ESTATES. — If a community estate is administered as if each decedent survived the other because of application of the simultaneous death act, section 15-2-104 and section 15-2-601 of this
code, or the provisions of a will, community debts will be charged ratably to each half of the community estate and separate debts to the estate of the decedent by whom they were incurred.

CHAPTER 9
SPECIAL PROVISIONS
RELATING TO DISTRIBUTION

15-3-901. SUCCESSORS' RIGHTS IF NO ADMINISTRATION. — In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devises may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

15-3-902. DISTRIBUTION — ORDER IN WHICH ASSETS APPROPRIATED — ABATEMENT. — (a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If an estate of a decedent consists partly of separate property and partly of community property, community debts shall be charged to
community property and separate debts to separate property. Expenses of administration shall be apportioned and charged against the different kinds of property in proportion to the relative value thereof, except that none of such expenses shall be apportioned or charged to the survivor's share of the community property.

(d) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

15-3-903. RIGHT OF RETAINER. — The amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

15-3-904. INTEREST ON GENERAL PECUNIARY DEVISE. — General pecuniary devises bear interest at the legal rate beginning one (1) year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

15-3-905. PENALTY CLAUSE FOR CONTEST. — A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

15-3-906. DISTRIBUTION IN KIND — VALUATION — METHOD. — (a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 15-2-402 of this code shall receive the items selected.

(2) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided:

(A) the person entitled to the payment has not demanded payment in cash;

(B) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(C) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under paragraph (2) securities
regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty (30) days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty (30) days after mailing or delivery of the proposal.

15-3-907. DISTRIBUTION IN KIND — EVIDENCE. — If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

15-3-907A. DECEASED BENEFICIARY AS HEIR. — (a) If the decedent has left a surviving child or children or issue of children among the persons who are by law entitled to succeed to his estate, and any of them, before the close of administration, has died before reaching the age of eighteen (18) and not having married, no administration of such deceased issue's estate is necessary, but all the estate which such deceased issue is entitled to receive by inheritance must, without administration, be distributed to the heirs at law of the deceased issue.
(b) If any other heir, legatee, or devisee shall die after the decedent's death and before distribution, property to which he might be entitled shall be distributed to the representative of his estate or directly to his heirs, legatees or devisees or the persons entitled thereto.

15-3-908. DISTRIBUTION - RIGHT OR TITLE OF DISTRIBUTEE.
- Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

15-3-909. IMPROPER DISTRIBUTION - LIABILITY OF DISTRIBUTEE. - Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

15-3-910. PURCHASERS FROM DISTRIBUTEES PROTECTED. - If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

15-3-911. PARTITION FOR PURPOSE OF DISTRIBUTION. - When two (2) or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one (1) or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.
15-3-912. PRIVATE AGREEMENTS AMONG SUCCESSORS TO DECEDEDENT BINDING ON PERSONAL REPRESENTATIVE. – Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedent's estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

15-3-913. DISTRIBUTIONS TO TRUSTEE. – (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 15-7-303 of this code.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b) of this section.

15-3-914. DISPOSITION OF UNCLAIMED ASSETS. – If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his trustee if one has been appointed; or, if no trustee has been appointed, shall file the report of abandoned property required by section 14-511, Idaho Code, and proceed to dispose of the property in the manner set forth in the “unclaimed property act,” provided, however, that in the event no person appears to claim such property within eighteen hundred and twenty-seven (1827) days (approximately five (5) years) of the time such monies or property is
deposited with the state tax commission, the monies or property so deposited shall accrue and be set over to the state building fund.

15-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY. — A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

15-3-916. APPORTIONMENT OF ESTATE TAXES. — (a) For purposes of this section:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the inheritance tax payable to this state;

(2) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(3) "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(4) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(5) "Tax" means the federal estate tax and the additional inheritance tax imposed by Idaho and interest and penalties imposed in addition to the tax;

(6) "Fiduciary" means personal representative or trustee.

(b) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this code, the method described in the will controls.

(c)(1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.
(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b) of this section, because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be prima facie correct.

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving
the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devisee is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) of this section, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the internal revenue code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three (3) months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three (3) months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was
collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

CHAPTER 10
CLOSING ESTATES

15-3-1001. FORMAL PROCEEDINGS TERMINATING ADMINISTRATION - TESTATE OR INTESTATE - ORDER OF GENERAL PROTECTION. - (a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one (1) year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(b) If one (1) or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on
proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

15-3-1002. FORMAL PROCEEDINGS TERMINATING TESTATE ADMINISTRATION — ORDER CONSTRUING WILL WITHOUT ADJUDICATING TESTACY. — A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one (1) year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 15-3-1001 of this chapter.

15-3-1003. CLOSING ESTATES — BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE. — (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six (6) months after the date of original appointment of
a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(1) published notice to creditors as provided by section 15-3-801 of this code and that the first publication occurred more than six (6) months prior to the date of the statement;

(2) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(3) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(b) If no proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

15-3-1004. LIABILITY OF DISTRIBUTEES TO CLAIMANTS. - After assets of an estate have been distributed and subject to section 15-3-1006 of this chapter, an undischarged claim not barred may be prosecuted in a proceeding against one (1) or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

15-3-1005. LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL REPRESENTATIVE. - Unless previously barred by
adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six (6) months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent’s estate.

15-3-1006. LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (1) three (3) years after the decedent’s death; or (2) one (1) year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

15-3-1007. CERTIFICATE DISCHARGING LIENS SECURING FIDUCIARY PERFORMANCE. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

15-3-1008. SUBSEQUENT ADMINISTRATION. — If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one (1) year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.
CHAPTER 11

COMPROMISE OF CONTROVERSIES

15-3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING TRUSTS, INALIENABLE INTERESTS, OR INTERESTS OF THIRD PERSONS. — A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

15-3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF COMPROMISE. — The procedure for securing court approval of a compromise is as follows:

(a) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(b) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(c) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.
CHAPTER 12
COLLECTION OF PERSONAL PROPERTY
BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE
FOR SMALL ESTATES

15-3-1201. COLLECTION OF PERSONAL PROPERTY BY
AFFIDAVIT. — (a) Thirty (30) days after the death of a decedent, any
person indebted to the decedent or having possession of tangible personal
property or an instrument evidencing a debt, obligation, stock or chose in
action belonging to the decedent shall make payment of the indebtedness or
deliver the tangible personal property or an instrument evidencing a debt,
obligation, stock or chose in action to a person claiming to be the successor
of the decedent upon being presented an affidavit made by or on behalf of
the successor stating that:

(1) the value of the entire estate, wherever located, less liens and
encumbrances, does not exceed five thousand dollars ($5,000);
(2) thirty (30) days have elapsed since the death of the decedent;
(3) no application or petition for the appointment of a personal
representative is pending or has been granted in any jurisdiction; and
(4) the claiming successor is entitled to payment or delivery of the
property.

(b) A transfer agent of any security shall change the registered
ownership on the books of a corporation from the decedent to the successor
or successors upon the presentation of an affidavit as provided in subsection
(a) of this section.

15-3-1202. EFFECT OF AFFIDAVIT. — The person paying,
delivering, transferring, or issuing personal property or the evidence thereof
pursuant to affidavit is discharged and released to the same extent as if he
dealt with a personal representative of the decedent. He is not required to
see to the application of the personal property or evidence thereof or to
inquire into the truth of any statement in the affidavit. If any person to
whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any
personal property or evidence thereof, it may be recovered or in payment,
delivery, transfer, or issuance compelled upon proof of their right in a
proceeding brought for the purpose by or on behalf of the persons entitled
thereto. Any person to whom payment, delivery, transfer or issuance is made
is answerable and accountable therefor to any personal representative of the
estate or to any other person having a superior right.

15-3-1203. SMALL ESTATES — SUMMARY ADMINISTRATIVE
PROCEDURE. — If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 15-3-1204 of this chapter.

15-3-1204. SMALL ESTATES — CLOSING BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE. — (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 15-3-1203 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement that:

(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(b) If no actions or proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

(c) A closing statement filed under this section has the same effect as one filed under section 15-3-1003 of this code.
ARTICLE IV
FOREIGN PERSONAL REPRESENTATIVES –
ANCILLARY ADMINISTRATION
CHAPTER 1
DEFINITIONS
15-4-101. DEFINITIONS. – In this article (a) “local administration”
means administration by a personal representative appointed in this state
pursuant to appointment proceedings described in article III.
(b) “Local personal representative” includes any personal
representative appointed in this state pursuant to appointment proceedings
described in article III and excludes foreign personal representatives who
acquire the power of a local personal representative pursuant to section
15-4-205 of this code.
(c) “Resident creditor” means a person domiciled in, or doing business
in this state, who is, or could be, a claimant against an estate of a
nonresident decedent.

CHAPTER 2
POWERS OF
FOREIGN PERSONAL REPRESENTATIVES
15-4-201. PAYMENT OF DEBT AND DELIVERY OF PROPERTY
TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE
WITHOUT LOCAL ADMINISTRATION. – At any time after the expiration
of sixty (60) days from the death of a nonresident decedent, any person
indebted to the estate of the nonresident decedent or having possession or
control of personal property, or of an instrument evidencing a debt,
obligation, stock or chose in action belonging to the estate of the
nonresident decedent may pay the debt, deliver the personal property, or the
instrument evidencing the debt, obligation, stock or chose in action, to the
domiciliary foreign personal representative of the nonresident decedent upon
being presented with proof of his appointment and an affidavit made by or
on behalf of the representative stating:
(a) The date of the death of the nonresident decedent;
(b) That no local administration, or application or petition therefor, is
pending in this state;
(c) That the domiciliary foreign personal representative is entitled to
payment or delivery.
15-4-202. PAYMENT OR DELIVERY DISCHARGES. — Payment or
delivery made in good faith on the basis of the proof of authority and
affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

15-4-203. RESIDENT CREDITOR NOTICE. — Payment or delivery under section 15-4-201 of this chapter may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

15-4-204. PROOF OF AUTHORITY--BOND. — If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

15-4-205. POWERS. — A domiciliary foreign personal representative who has complied with section 15-4-204 of this chapter may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

15-4-206. POWER OF REPRESENTATIVES IN TRANSITION. — The power of a domiciliary foreign personal representative under section 15-4-201 or 15-4-205 of this chapter shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 15-4-205 of this chapter, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

15-4-207. ANCILLARY AND OTHER LOCAL ADMINISTRATIONS -- PROVISIONS GOVERNING. — In respect to a nonresident decedent, the
provisions of article III of this code govern (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

CHAPTER 3
JURISDICTION OVER FOREIGN REPRESENTATIVES

15-4-301. JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE. - A foreign personal representative submits himself to the jurisdiction of the courts of this state by:

(a) filing authenticated copies of his appointment as provided in section 15-4-204 of this code;
(b) receiving payment of money or taking delivery of personal property under section 15-4-201 of this code; or
(c) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual.

Jurisdiction under subsection (b) of this section is limited to the money or value of personal property collected.

15-4-302. JURISDICTION BY ACT OF DECEDE NT. - In addition to jurisdiction conferred by section 15-4-301 of this chapter, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

15-4-303. SERVICE ON FOREIGN PERSONAL REPRESENTATIVE. - (a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a) of this section, he shall be allowed at least thirty (30) days within which to appear or respond.
CHAPTER 4
JUDGMENTS AND PERSONAL REPRESENTATIVE
15-4-401. EFFECT OF ADJUDICATION FOR OR AGAINST PERSONAL REPRESENTATIVE. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

ARTICLE V
PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY
CHAPTER 1
GENERAL PROVISIONS
15-5-101. DEFINITIONS AND USE OF TERMS. — Unless otherwise apparent from the context, in this code:
(a) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;
(b) A "protective proceeding" is a proceeding under the provisions of section 15-5-401 of this code to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;
(c) A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;
(d) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
15-5-102. JURISDICTION OF SUBJECT MATTER — CONSOLIDATION OF PROCEEDINGS. — When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.
15-5-103. FACILITY OF PAYMENT OR DELIVERY. — Any person under a duty to pay or deliver money or personal property to a minor may
perform this duty, in amounts not exceeding five thousand dollars ($5,000) per annum, by paying or delivering the money or property to, (1) the minor, if he has attained the age of eighteen (18) years or is married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) of this section, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor’s support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN. — A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

15-5-105. EVIDENCE IN PROCEEDINGS INVOLVING VETERAN’S BENEFITS. If benefits derived from the United States through the veterans administration are involved in any proceeding under this article, a certificate of the administrator or his authorized representative shall be prima facie evidence of the necessity of appointment of a guardian or conservator or both if:

(a) It sets forth the age of the minor involved in the proceeding as shown by the records of the veterans administration and the fact that appointment is a condition precedent to payment of any monies;

(b) It sets forth the fact that a purportedly incapacitated person involved in the proceeding has been rated incompetent by the veterans administration upon examination pursuant to the laws governing such administration and that appointment of a guardian is a condition precedent to payment of any monies due such incapacitated person.
15-5-106. COPIES OF PUBLIC RECORDS TO BE FURNISHED. — When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any persons to participate in benefits made available by the veterans administration, the official custodian of such public records shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans administration with a certified copy of such record.

15-5-107. WRONGFUL APPROPRIATION. — Upon the petition of anyone interested in the welfare of the ward, anyone suspected of having concealed, embezzled or conveyed away any of the monies, goods or effects belonging to the ward or his estate may be ordered by the court to appear and be examined on oath and held to account upon such matters and for such property.

CHAPTER 2
GUARDIANS OF MINORS

15-5-201. STATUS OF GUARDIAN OF MINOR — GENERAL. — A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

15-5-202. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR. — The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 15-5-203 of this chapter, a testamentary appointment becomes effective upon filing the guardian’s acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian’s acceptance under a will probated in another state which is the testator’s domicile.

15-5-203. OBJECTION BY MINOR OF FOURTEEN OR OLDER TO TESTAMENTARY APPOINTMENT. — A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the
testamentary nominee, or any other suitable person.

15-5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR — CONDITIONS FOR APPOINTMENT. — The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 15-5-202 of this chapter whose appointment has not been prevented or nullified under 15-5-203 of this chapter has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

15-5-205. COURT APPOINTMENT OF GUARDIAN OF MINOR — VENUE. — The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

15-5-206. COURT APPOINTMENT OF GUARDIAN OF MINOR — QUALIFICATIONS — PRIORITY OF MINOR’S NOMINEE. — The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR — PROCEDURE. — Proceedings for the appointment of a guardian may be initiated by any relative of the minor, the minor if he is fourteen (14) years of age, or any person interested in the welfare of the minor.

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401 of this code to:

(1) the minor, if he is fourteen (14) or more years of age;
(2) the person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition; and
(3) any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204 of this chapter have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.
(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) years of age or older.

(e) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

15-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT NOTICE. — By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

15-5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR. — A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 15-5-103 of this code. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A
guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward’s education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward’s estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

15-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN — GENERAL. — A guardian’s authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor’s death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

15-5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT — VENUE. — (a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

15-5-212. RESIGNATION OR REMOVAL PROCEEDINGS. — (a) Any person interested in the welfare of a ward, or the ward, if fourteen (14) or more years of age, may petition for removal of a guardian on the
ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

CHAPTER 3
GUARDIANS OF INCAPACITATED PERSONS

15-5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON. — (a) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is
terninated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this chapter.

15-5-302. VENUE. – The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

15-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON. – (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor shall also interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

15-5-304. FINDINGS — ORDER OF APPOINTMENT. – The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

15-5-305. ACCEPTANCE OF APPOINTMENT — CONSENT TO JURISDICTION. – By accepting appointment, a guardian submits
personally to the jurisdiction of the court in any proceeding relating to the
guardianship that may be instituted by any interested person. Notice of any
proceeding shall be delivered to the guardian or mailed to him by ordinary
mail at his address as listed in the court records and to his address as then
known to the petitioner.

15-5-306. TERMINATION OF GUARDIANSHIP FOR
INCAPACITATED PERSON. - The authority and responsibility of a
guardian for an incapacitated person terminates upon the death of the
 guardian or ward, the determination of incapacity of the guardian, or upon
removal or resignation as provided in section 15-5-307 of this chapter.
Testamentary appointment under an informally probated will terminates if
the will is later denied probate in a formal proceeding.

15-5-307. REMOVAL OR RESIGNATION OF GUARDIAN -
TERMINATION OF INCAPACITY. - (a) On petition of the ward or any
person interested in his welfare, the court may remove a guardian and
appoint a successor if in the best interests of the ward. On petition of the
guardian, the court may accept his resignation and make any other order
which may be appropriate.

(b) An order adjudicating incapacity may specify a minimum period,
not exceeding one (1) year, during which no petition for an adjudication
that the ward is no longer incapacitated may be filed without special leave.
Subject to this restriction, the ward or any person interested in his welfare
may petition for an order that he is no longer incapacitated, and for removal
or resignation of the guardian. A request for this order may be made by
informal letter to the court or judge and any person who knowingly
interferes with transmission of this kind of request to the court or judge may
be adjudged guilty of contempt of court.

(c) Before removing a guardian, accepting the resignation of a guardian,
or ordering that a ward's incapacity has terminated, the court, following the
same procedures to safeguard the rights of the ward as apply to a petition for
appointment of a guardian, may send a visitor to the residence of the present
guardian, and to the place where the ward resides or is detained, to observe
conditions and report in writing to the court.

(d) Upon request, a jury may be summoned to hear factual issues as in
other civil cases.

15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. - A visitor
is, with respect to guardianship proceedings, a person who is trained in law,
nursing or social work and is an officer, employee or special appointee of the
court with no personal interest in the proceedings.

15-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS. — (a) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(1) the ward or the person alleged to be incapacitated and his spouse, parents and adult children;
(2) any person who is serving as his guardian, conservator or who has his care and custody; and
(3) in case no other person is notified under subsection (a)(1) of this section, at least one (1) of his closest adult relatives, if any can be found.

(b) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 15-1-401 of this code. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

15-5-310. TEMPORARY GUARDIANS. — If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six (6) months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

15-5-311. WHO MAY BE GUARDIAN — PRIORITIES. — (a) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.
(b) Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) the spouse of the incapacitated person;
(2) an adult child of the incapacitated person;
(3) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
(4) any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;
(5) a person nominated by the person who is caring for him or paying benefits to him.

15-5-312. GENERAL POWERS AND DUTIES OF GUARDIAN. —
(a) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.
(2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward, and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.
(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.
(4) If no conservator for the estate of the ward has been appointed, he may:

(A) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;
(B) receive money and tangible property deliverable to the ward and apply the money and property for support, care and
education of the ward; but, he may not use funds from his ward’s estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one (1) of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward’s needs.

(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.

(6) If a conservator has been appointed, all of the ward’s estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward’s estate by payment to third persons or institutions for the ward’s care and maintenance.

15-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT — VENUE. — (a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

CHAPTER 4

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

15-5-401. PROTECTIVE PROCEEDINGS. — Upon petition and after
notice and hearing in accordance with the provisions of this chapter, the court may appoint a conservator or make other protective order for cause as follows:

(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (1) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (2) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

15-5-402. PROTECTIVE PROCEEDINGS — JURISDICTION OF AFFAIRS OF PROTECTED PERSONS. — After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(b) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(c) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

15-5-403. VENUE. — Venue for proceedings under this chapter is:

(a) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(b) If the person to be protected does not reside in this state, in any place where he has property.
15-5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER. (a) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

15-5-405. NOTICE. (a) On a petition for appointment of a conservator or other protective order, the person to be protected and his non-estranged spouse or, if none, his parents, must be served personally with notice of the proceedings at least fourteen (14) days before the date of hearing if they can be found within the state, or, if they can not be found within the state, they, any other guardian or conservator and any government agency paying benefits to the person sought to be protected (if the person seeking the appointment has knowledge of the existence of these benefits) must be given notice in accordance with section 15-1401 of this code. Waiver by the person to be protected is not effective unless the proceedings are limited to payment of veterans administration benefits, he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(b) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 15-5-406 of this chapter and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection (a) of this section, notice shall be given in accordance with section 15-1-401 of this code.

15-5-406. PROTECTIVE PROCEEDINGS REQUEST FOR NOTICE - INTERESTED PERSON. Any interested person who desires to be notified before any order is made in a protective proceeding may file with
the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

15-5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION. — (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it must appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

(c) Unless the person to be protected has counsel of his own choice, the court may appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

15-5-408. PERMISSIBLE COURT ORDERS. — The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(a) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice
to others, the court has power to preserve and apply the property of the
person to be protected as may be required for his benefit or the benefit of
his dependents.

(b) After hearing and upon determining that a basis for an
appointment or other protective order exists with respect to a minor without
other disability, the court has all those powers over the estate and affairs of
the minor which are or might be necessary for the best interests of the
minor, his family and members of his household.

(c) After hearing and upon determining that a basis for an appointment
or other protective order exists with respect to a person for reasons other
than minority, the court has, for the benefit of the person and members of
his household, all the powers over his estate and affairs which he could
case if present and not under disability, except the power to make a will.
These powers include, but are not limited to power to make gifts, to convey
or release his contingent and expectant interests in property including
marital property rights and any right of survivorship incident to joint
tenancy or tenancy by the entirety, to exercise or release his powers as
trustee, personal representative, custodian for minors, conservator, or donee
of a power of appointment, to enter into contracts, to create revocable or
irrevocable trusts of property of the estate which may extend beyond his
disability or life, to exercise options of the disabled person to purchase
securities or other property, to exercise his rights to elect options and change
beneficiaries under insurance and annuity policies and to surrender the
policies for their cash value, to exercise his right to an elective share in the
estate of his deceased spouse and to renounce any interest by testate or
intestate succession or by inter vivos transfer.

(d) The court may exercise or direct the exercise of, its authority to
exercise or release powers of appointment of which the protected person is
donee, to renounce interests, to make gifts in trust or otherwise exceeding
twenty percent (20%) of any year's income of the estate or to change
beneficiaries under insurance and annuity policies, only if satisfied, after
notice and hearing, that it is in the best interests of the protected person,
and that he either is incapable of consenting or has consented to the
proposed exercise of power.

(e) An order made pursuant to this section determining that a basis for
appointment of a conservator or other protective order exists, has no effect
on the capacity of the protected person.

15-5-409. PROTECTIVE ARRANGEMENTS AND SINGLE
TRANSACTIONS AUTHORIZED. — (a) If it is established in a proper proceeding that a basis exists as described in section 15-5-401 of this chapter for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in section 15-5-401 of this chapter for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person’s financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

15-5-410. WHO MAY BE APPOINTED CONSERVATOR — PRIORITIES. — (a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(2) an individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
the spouse of the protected person;
(4) an adult child of the protected person;
(5) a parent of the protected person, or a person nominated by the will of a deceased parent;
(6) any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;
(7) a person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (1), (3), (4), (5), or (6) of subsection (a) of this section may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

15-5-411. BOND. — The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one (1) year’s estimated income minus the value of securities deposited under arrangements requiring an order by the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

15-5-412. TERMS AND REQUIREMENTS OF BONDS. — (a) The following requirements and provisions apply to any bond required under section 15-5-411 of this chapter:

(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;
(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;
(3) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(4) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

15-5-413. ACCEPTANCE OF APPOINTMENT — CONSENT TO JURISDICTION. — By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

15-5-414. COMPENSATION AND EXPENSES. — If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

15-5-415. DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR. — The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

15-5-416. PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT. — (a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.
15-5-417. GENERAL DUTY OF CONSERVATOR. — In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section 15-7-302 of this code.

15-5-418. INVENTORY AND RECORDS. — Within ninety (90) days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen (14) years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

15-5-419. ACCOUNTS. — Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person’s minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

15-5-420. CONSERVATORS — TITLE BY APPOINTMENT. — The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or
dispositive instrument relating to a conservator.

15-5-421. RECORDING OF CONSERVATOR’S LETTERS. — Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Letters of conservatorship and orders terminating conservatorship may be recorded in the office of the county recorder in any county in which property affected by such letters or orders is located and, from the time of filing the same for record, notice is imparted to all persons of the contents of such letters or orders.

15-5-422. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST — VOIDABLE — EXCEPTIONS. — Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

15-5-423. PERSONS DEALING WITH CONSERVATORS — PROTECTION. — A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 15-5-408 of this chapter, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 15-5-426 of this chapter are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

15-5-424. POWERS OF CONSERVATOR IN ADMINISTRATION. — (a) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian.
of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by chapter 2 of this article.

(b) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

1. collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
2. receive additions to the estate;
3. continue or participate in the operation of any business or other enterprise;
4. acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
5. invest and reinvest estate assets in accordance with subsection (b) of this section;
6. deposit estate funds in a bank including a bank operated by the conservator;
7. acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset for a term within or extending beyond the term of the conservatorship in connection with the exercise of any power vested in the conservator;
8. make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
9. subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;
10. enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending
beyond the term of the conservatorship;
(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
(12) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
(13) vote a security, in person or by general or limited proxy;
(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
(15) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
(16) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
(17) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
(18) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;
(19) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
(20) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;
(21) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
(22) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the
conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(23) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(24) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(25) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

15-5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR. -- (a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(1) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (A) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (B) the accustomed standard of living of the protected person and members of his household; (C) other funds or sources used for the support of the protected person.
(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent (20%) of the income from the estate.

(c) When a minor who has not been adjudged disabled under subsection (b) of section 15-5-401 of this chapter attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(d) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty (40) days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 15-3-204 of this code and to any person
nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 15-3-308 and chapters 6 through 10 of article III except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative.

15-5-426. ENLARGEMENT OR LIMITATION OF POWERS OF CONSERVATOR. — Subject to the restrictions in subsection (d) of section 15-5-408 of this chapter, the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 15-5-424 and 15-5-425 of this chapter, any power which the court itself could exercise under subsection (b) and (c) of section 15-5-408 of this chapter. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 15-5-424 and 15-5-425 of this chapter, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 15-5-424 or section 15-5-425 of this chapter, the limitation shall be endorsed upon his letters of appointment.

15-5-427. PRESERVATION OF ESTATE PLAN. — In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of section 15-5-425 of this chapter, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

15-5-428. CLAIMS AGAINST PROTECTED PERSON — ENFORCEMENT. — (a) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim
may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty (60) days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty (30) days after its disallowance.

(b) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

15-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.
(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or
15-5-430. TERMINATION OF PROCEEDING. — The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedure as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased or that it would be in the best interests of the protected person to establish the conservatorship in another jurisdiction may terminate the conservatorship and, where appropriate, order initiation of proceedings in another jurisdiction or delivery of the assets to a foreign conservator. Upon termination, title to assets of the estate passes to the former protected person or to his successor subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or his successors, to evidence the transfer.

15-5-431. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS. — Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state or residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(a) That no protective proceeding relating to the protected person is pending in this state; and

(b) That the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

CHAPTER 5
POWERS OF ATTORNEY

15-5-501. WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY. — Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the
principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

15-5-502. OTHER POWERS OF ATTORNEY NOT REVOKED UNTIL NOTICE OF DEATH OR DISABILITY. (a) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 15-5-501 of this chapter, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(b) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(c) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.
ARTICLE VI
NON-PROBATE TRANSFERS
CHAPTER 1
MULTIPLE-PARTY ACCOUNTS

15-6-101. DEFINITIONS. — In this chapter, unless the context otherwise requires:
(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account and other like arrangement;
(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;
(3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions;
(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship;
(5) A "multiple-party account" is any of the following types of account:
   (a) a joint account;
   (b) a P.O.D. account; or
   (c) a trust account.
It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;
(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question;
(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal;

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge;

(9) "Proof of death" includes a death certificate or record or report which is prima facie proof of death under section 15-1-107 of this code;

(10) "P.O.D. account" means an account payable on request to one (1) person during his lifetime and on his death to one (1) or more P.O.D. payees, or to one (1) or more persons during their lifetimes and on the death of all of them to one (1) or more P.O.D. payees;

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one (1) or more persons;

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal;

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party;

(14) "Trust account" means an account in the name of one (1) or more parties as trustee for one (1) or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that
payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

15-6-102. OWNERSHIP AS BETWEEN PARTIES, AND OTHERS - PROTECTION OF FINANCIAL INSTITUTIONS. — The provisions of sections 15-6-103 through 15-6-105 of this chapter concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 15-6-108 through 15-6-113 of this chapter govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights.

15-6-103. OWNERSHIP DURING LIFETIME. — (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two (2) or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two (2) or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

15-6-104. RIGHT OF SURVIVORSHIP. — (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two (2) or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 15-6-103 of this chapter augmented by an equal share
for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two (2) or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one (1) or more die before the original payee; if two (2) or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two (2) or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one (1) or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two (2) or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

15-6-105. EFFECT OF WRITTEN NOTICE TO FINANCIAL INSTITUTION. The provisions of section 15-6-104 of this chapter as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party’s lifetime, and not countermanded by other written order of the same party during his lifetime.

15-6-106. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Any transfers resulting from the application of section 15-6-104 of this chapter are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to articles I through IV of this code.
15-6-107. RIGHTS OF CREDITORS. — No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent’s estate. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor or dependent child of the decedent, and no proceeding shall be commenced later than two (2) years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent’s estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative.

15-6-108. FINANCIAL INSTITUTION PROTECTION — PAYMENT ON SIGNATURE OF ONE PARTY. — Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one (1) or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

15-6-109. FINANCIAL INSTITUTION PROTECTION — PAYMENT AFTER DEATH OR DISABILITY — JOINT ACCOUNT. — Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 15-6-104 of this chapter.
15-6-110. FINANCIAL INSTITUTION PROTECTION PAYMENT OF P.O.D. ACCOUNT. — Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

15-6-111. FINANCIAL INSTITUTION PROTECTION PAYMENT OF TRUST ACCOUNT. — Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

15-6-112. FINANCIAL INSTITUTION PROTECTION — DISCHARGE. — Payment made pursuant to sections 15-6-108, 15-6-109, 15-6-110 or 15-6-111 of this chapter discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.
15-6-113. FINANCIAL INSTITUTION PROTECTION — SETOFF. — Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

CHAPTER 2
PROVISIONS RELATING TO EFFECT OF DEATH
15-6-201. PROVISIONS FOR PAYMENT OR TRANSFER AT DEATH. — (a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promise or the promissor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this state.

ARTICLE VII
TRUST ADMINISTRATION
CHAPTER 1
TRUST REGISTRATION
15-7-101. DUTY TO REGISTER TRUSTS. — The trustee of a trust having its principal place of administration in this state shall register the trust
in the court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee’s usual place of business where the records pertaining to the trust are kept, or at the trustee’s residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-trustees as agreed upon by them. The duty to register under this part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

15-7-102. REGISTRATION PROCEDURES. — Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust: (1) in the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate; (2) in the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or (3) in the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust’s creation and the terms of the trust, including the subject matter, beneficiaries and time of performance. If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this state.

15-7-103. EFFECT OF REGISTRATION. — (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under 15-7-201 of this code relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee, or mailed to him by ordinary first class mail at his address as listed in the registration or as thereafter reported to the court and to his address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a
trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 15-7-201 of this code, provided notice is given pursuant to section 15-1-401 of this code.

15-7-104. EFFECT OF FAILURE TO REGISTER. — A trustee who fails to register a trust in a proper place as required by this chapter, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within thirty (30) days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this chapter is subject to removal and denial of compensation or to surcharge as the court may direct unless directed not to register by all beneficiaries or as provided in section 15-1-108 of this code a person with a general power of appointment representing all the beneficiaries and acting for them. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective.

15-7-105. REGISTRATION — QUALIFICATION OF FOREIGN TRUSTEE. — A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

CHAPTER 2
JURISDICTION OF COURT CONCERNING TRUSTS

15-7-201. COURT — EXCLUSIVE JURISDICTION OF TRUSTS. —
(a) The court of registration has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of
rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

1. Appoint or remove a trustee;
2. Review trustees' fees and to review and settle interim or final accounts;
3. Ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right; and
4. Release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section results in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

15-7-202. TRUST PROCEEDINGS — VENUE. — Venue for proceedings under section 15-7-201 of this chapter involving registered trusts is in the place of registration. Venue for proceedings under section 15-7-201 of this chapter involving trusts not registered in this state is in any place where the trust properly could have been registered, and otherwise by the rules of civil procedure.

15-7-203. TRUST PROCEEDINGS — DISMISSAL OF MATTERS RELATING TO FOREIGN TRUSTS. — The court will not, over the objection of a party, entertain proceedings under section 15-7-201 of this chapter involving a trust registered or having its principal place of administration in another state, unless (1) when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.
15-7-204. COURT — CONCURRENT JURISDICTION OF LITIGATION INVOLVING TRUSTS AND THIRD PARTIES. — The court of the place in which the trust is registered has concurrent jurisdiction with other courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

15-7-205. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND REVIEW OF COMPENSATION OF TRUSTEE AND EMPLOYEES OF TRUST. — On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

15-7-206. TRUST PROCEEDINGS — INITIATION BY NOTICE — NECESSARY PARTIES. — Proceedings under section 15-7-201 of this chapter are initiated by filing a petition in the court and giving notice pursuant to section 15-1-401 of this code to interested parties. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

CHAPTER 3
DUTIES AND LIABILITIES OF TRUSTEES

15-7-301. GENERAL DUTIES NOT LIMITED. — Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this code.

15-7-302. TRUSTEE’S STANDARD OF CARE AND PERFORMANCE. — Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.
15-7-303. DUTY TO INFORM AND ACCOUNT TO BENEFICIARIES. — The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

(a) Within thirty (30) days after his acceptance of the trust, the trustee shall inform in writing the current beneficiaries and if possible, one (1) or more persons who under section 15-1-403 of this code may represent beneficiaries with future interests, of the court in which the trust is registered and of his name and address.

(b) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(c) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

15-7-304. DUTY TO PROVIDE BOND. — A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 15-3-604 and 15-3-606 of this code relating to bonds of personal representatives.

15-7-305. TRUSTEE'S DUTIES — APPROPRIATE PLACE OF ADMINISTRATION — DEVIATION. — A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall
be given weight in determining the suitability of the trustee and the place of administration.

15-7-306. PERSONAL LIABILITY OF TRUSTEE TO THIRD PARTIES. — (a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(c) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

15-7-307. LIMITATIONS ON PROCEEDINGS AGAINST TRUSTEES AFTER FINAL ACCOUNT. — Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three (3) years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative as described in subsections (a)(1) and (2) of section 15-1-403 of this code.

CHAPTER 4
POWERS OF TRUSTEES

15-7-401. POWERS OF TRUSTEES. — The powers of trustees are set forth in the uniform powers of trustees act, sections 68-104 through 68-113, Idaho Code.
SECTION 2. That Section 5-231, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapters 1, 2 and 3, Title 14, Idaho Code, be, and the same are hereby repealed.

SECTION 4. That Sections 14-418, 14-419, 14-420, 14-421, 14-422 and 14-423, Idaho Code, be, and the same are hereby repealed.

SECTION 5. That Chapters 1 through 15 and Chapters 17 through 22, Title 15, Idaho Code, be, and the same are hereby repealed.

SECTION 6. Chapter 16, Title 15, Idaho Code, shall be and is hereby designated from the time of the effective date of this act as Chapter 1, Title 14, Idaho Code.

SECTION 7. That Section 32-921, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 68-1101, Idaho Code, be, and the same is hereby repealed.

SECTION 9. That Section 6-542, Idaho Code, be, and the same is hereby amended to read as follows:

6-542. SALE OF INFANT'S SHARE — PAYMENT OF PROCEEDS TO GUARDIAN. — When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

SECTION 10. That Section 6-543, Idaho Code, be, and the same is hereby amended to read as follows:

6-543. SALE OF SHARE OF INSANE PERSON — PAYMENT OF PROCEEDS TO GUARDIAN. — The guardian who may be entitled to the custody and management of the estate of an insane person or of other person adjudged incapable of conducting his own affairs, an incapacitated or protected person whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees on executing, with sufficient sureties, an undertaking approved by a judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled or to his legal representative.

SECTION 11. That Section 14-405, Idaho Code, be, and the same is hereby amended to read as follows:

14-405. TAX A LIEN ON PROPERTY. — All taxes in this act provided for shall be and remain a lien upon the property passed or transferred until
paid; provided, however, that where property is sold under and in accordance with the provisions of chapter 7 of title 15, the lien herein provided for shall be released from the property so sold and shall attach to the proceeds of such sale, and the person to whom the property passes or is transferred, except as herein in this section provided, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed, or an interest in property is sold or transferred for value, the lien herein provided for shall be released from the property so sold or transferred and shall attach to the proceeds of such sale. A personal representative who has transferred property or an interest in property for value shall be personally liable for such taxes to the extent of the proceeds realized upon such transfer. The limitation of time within which proceedings may be commenced for the levying, appraising, assessing, determining or enforcing collection of any tax, interest or penalty, shall be five years from the date of application to a probate court of competent jurisdiction of this state for letters testamentary or of administration, or five years from the date of expiration of any extension or extensions of time granted for the payment of the tax, and in the event no application for letters testamentary or of administration is made, the limitation of time shall be five years from the date, as shown by the vital statistics records of the state of Idaho, of the death of the person whose "transfer" is subject to tax under the provisions of this act. Unless sued for within the time hereinabove provided after they are due and legally demandable, such taxes or any taxes accruing under the provisions hereof shall cease to be a lien as against any bona fide purchaser of said property.

SECTION 12. That Chapter 4, Title 14, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 14-418, Idaho Code, and to read as follows:

14-418. INHERITANCE TAX DETERMINATION. — When the transfer of any property is subject to taxation because of the provisions of the "transfer and inheritance tax act", such tax shall be determined by the state tax commission:

(a) No later than one (1) year from the date of death, the personal representative or an interested person shall file a sworn statement upon a form prescribed by the state tax commission and containing the name and date of death of the decedent; the place of death, the city, county and state of residence of the decedent; the description, location and fair market value
of all property involved; the names and places of residence of all persons
interested in the same; and such other facts as are necessary for
determination of tax liability.

(b) Upon the receipt of such statement and after necessary
investigation, the state tax commission shall determine the fair market value
of all property subject to tax, all allowable deductions and the amount of
tax due on all transfers subject to tax together with any interest or penalty
that may be due. In making its determination, the state tax commission may
require that appraisals or other necessary information be supplied. Upon
payment, the state tax commission shall issue a receipt or release which may
be filed for record in any county in which property owned by the decedent
is located. The tax determination, if not paid, may be collected as are
income tax deficiencies in the manner set forth in Chapter 30, Title 63,
Idaho Code.

(c) Any person aggrieved by a determination by the state tax
commission may appeal such determination by filing a petition with the
district court of the county in which probate or testacy proceedings have
been filed or, if none have been filed, in the county of residence of the
decedent or, if the decedent was not a resident of this state, in a county in
which property of the decedent is located. The petition shall be filed no later
than thirty (30) days after receipt of notice of the tax determination. The
matter shall be tried de novo but may be heard by the judge in chambers.

(d) Before any appeal may be filed, the tax assessed, together with
interest and penalties, shall be paid to the proper county treasurer or, in lieu
thereof, an appropriate surety company bond conditioned upon the
payment of such amount shall be filed with the clerk of the court.

(e) If the court finds that any tax is due, it shall enter judgment for
such tax including interest and penalties found due. Any taxes, penalties or
interest found by the court to be in excess of that which is due and owing
and paid shall be ordered refunded by the appropriate state or county
official together with interest from the time of payment.

(f) The judgment of the district court may be appealed.

(g) Amounts due shall be paid to the county treasurer as provided in
the transfer and inheritance tax act.

SECTION 13. That Section 15-1602, Idaho Code, be, and the same is
hereby amended to read as follows:

15-1602. 14-102. ESTATES TO BE ADMINISTERED. - Every public
administrator, duly qualified, must take charge of the estates of persons
dying within his county, as follows:

1. Of the estates of decedents for which no administrators personal representatives are appointed, and which, in consequence thereof, are being wasted, uncared for or lost and of estates which he is directed to administer by virtue of the provisions of subsection (a)(7) of section 15-3-203 of this code:

2. Of the estates of decedents who have no known heirs;

3. Of estates ordered into his hands by the probate court, and of estates to which the state of Idaho is an heir;

4. Of estates upon which letters of administration have been issued to him by the probate court, as provided in chapter 3 of this title.

SECTION 14. That Section 15-1603, Idaho Code, be, and the same is hereby amended to read as follows:

15-1603. 14-103. PROCUREMENT OF LETTERS. - Whenever a public administrator takes charge of an estate which he is entitled, under the provisions of chapter 3 of this title, to administer without letters of administration being issued, or under by order of the court, he must, with all convenient dispatch, procure letters of administration thereon. No notice of application for letters by a public administrator is necessary, and his official bond and oath are in lieu of the administrator's personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

SECTION 15. That Section 15-1605, Idaho Code, be, and the same is hereby amended to read as follows:

15-1605. 14-105. INVENTORY BY PUBLIC ADMINISTRATOR. - The public administrator must make and return a perfect inventory of all estates taken into his possession, administer and account for the same, according to the provisions of this title, subject to the control and direction of the probate court. When, as shown by the inventory, the estate amounts to less than two hundred fifty dollars ($250), no notice to creditors or other formal proceedings by the public administrator are required, but after the payment of the funeral expenses, the expenses of the last sickness and of administration, the probate court must order the residue, if any, converted into money and paid as may be just to such creditors or heirs as may appear, or into the state treasury as provided in this chapter section 15-2-105 of this code.

SECTION 16. That Section 15-1609, Idaho Code, be, and the same is hereby amended to read as follows:
15-1609. EXAMINATION OF ALLEGED EMBEZZLERS. — When the public administrator complains to the probate judge, on oath, that any person has concealed, embezzled or disposed of, or has in his possession any money, goods, property or effects, to the possession of which such administrator is entitled in his official capacity, the judge may cite such person to appear before the probate court, and may examine him on oath touching the matter of such complaint.

SECTION 17. That Section 15-1611, Idaho Code, be, and the same is hereby amended to read as follows:

15-1611. PUBLIC ADMINISTRATOR — PROBATE COURT MAY REQUIRE ACCOUNT. — The probate court may, at any time, order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

SECTION 18. That Section 15-1612, Idaho Code, be, and the same is hereby amended to read as follows:

15-1612. RETURNS BY PUBLIC ADMINISTRATOR. — The public administrator must, once in every six (6) months, make to the probate judge, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from each estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, if any, remaining in his hands.

SECTION 19. That Section 15-1613, Idaho Code, be, and the same is hereby amended to read as follows:

15-1613. UNCLAIMED MONEYS — PAYMENT INTO STATE TREASURY — ESCHERAT. — After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the administrator must pay into the state treasury any and all moneys and effects in his hands belonging to the estate, such moneys and effects shall be placed in the escheat suspense fund and shall remain therein for a period of eighteen months during which time claim may be made therefor in the manner provided by section 15-1329; provided, that if the certificate authorized by section 15-1329 is not presented to the state auditor within eighteen months after such moneys and effects have been paid into the state treasury, they shall be apportioned to the public school fund reported as unclaimed property as required by section 14-511, Idaho Code, and the procedure for distribution of abandoned property outlined in the unclaimed property act.
shall be followed, except that the proceeds shall be distributed in the manner provided in section 15-2-105 of this code.

SECTION 20. That Section 15-1615, Idaho Code, be, and the same is hereby amended to read as follows:

15-1615. PROCEEDINGS AGAINST PUBLIC ADMINISTRATOR. - When it appears that any money remains in the hands of the public administrator (after a final settlement of the estate) unclaimed, which should be paid over to the state treasurer tax commission the probate judge must order the same to be paid over, and on failure of the public administrator to comply with the order within ten (10) days after the same is made, the prosecuting attorney for the county must immediately institute the requisite legal proceedings against the public administrator for a judgment against him and the sureties on his official bond, in the amount of money so withheld, and costs.

SECTION 21. That Section 15-1616, Idaho Code, be, and the same is hereby amended to read as follows:

15-1616. PROVISIONS OF PRECEDING CHAPTERS - APPLICATION TO PUBLIC ADMINISTRATOR. - When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of the preceding chapters of this title uniform probate code must govern.

SECTION 22. That Section 15-1619, Idaho Code, be, and the same is hereby amended to read as follows:

15-1619. EFFECT OF DISCOVERY OF HEIR. - In event any heir of a decedent shall be discovered prior to distribution of any estate probated as herein provided, or under chapter 2, title 14, nothing herein contained shall operate to invalidate any probate proceedings had prior to appearance of such heir in the probate proceeding, nor to prevent the completion of such probate proceedings by either public or private administration, as may be ordered by the probate court.

SECTION 23. That Section 15-1620, Idaho Code, be, and the same is hereby repealed.

SECTION 24. That Section 30-511, Idaho Code, be, and the same is hereby amended to read as follows:

30-511. APPOINTMENT AS ADMINISTRATOR OR EXECUTOR PERSONAL REPRESENTATIVE PROHIBITED. - It shall be unlawful for any foreign corporation not authorized to do business in this state to be
appointed or to act as administrator or executor personal representative of any estate in the state of Idaho, under the laws of the state of Idaho.

SECTION 25. That Section 30-512, Idaho Code, be, and the same is hereby amended to read as follows:

30-512. APPOINTMENT AS GUARDIAN PROHIBITED. — It shall be unlawful for any foreign corporation that is not qualified to do business in this state to be appointed guardian or to act as guardian of any minor, or any insane or of any incompetent incapacitated or protected person.

SECTION 26. That Chapter 9, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 32-912A, Idaho Code, and to read as follows:

32-912A. If the husband shall be adjudged insane, the wife shall have the management and control and power of disposition of the community personal property.

SECTION 27. That Chapter 3, Title 66, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 66-360, Idaho Code, and to read as follows:

66-360. (a) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner provided by the law of this state and nothing in this act shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any facility of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall, with respect to such person, be vested with the same powers as superintendents of state hospitals
for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this act are so conditioned.

(b) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint, as is provided in subsection (a) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge of the committed person.

(c) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be
committed to the veterans administration or other agency of the United States pursuant to the original commitment.

SECTION 28. TIME OF TAKING EFFECT – PROVISIONS FOR TRANSITION. – (a) This code shall be in full force and effect on and after July 1, 1972.

(b) Except as provided elsewhere in this code, on the effective date of this code:

(1) the code applies to any wills of decedents dying thereafter;

(2) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(3) every personal representative including a person administering an estate or having been judicially assigned custody of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(5) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

Approved March 12, 1971.
CHAPTER 112
(S. B. No. 1124)

AN ACT
AMENDING SECTION 50-1030, IDAHO CODE, RELATING TO POWERS OF CITIES IN FINANCING, OPERATION, MAINTENANCE AND CONSTRUCTION OF WATER SYSTEMS, SEWERAGE SYSTEMS AND OTHER SUCH WORKS AS DEFINED IN SECTION 50-1029, IDAHO CODE, BY ADDING A PROVISION AUTHORIZING CITIES TO LEASE EXCESS OR SURPLUS CAPACITY OF SUCH WORKS TO ANY PARTY WITHIN OR WITHOUT THE CITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 50-1030, Idaho Code, be, and the same is hereby amended to read as follows:

50-1030. POWERS. - In addition to the powers which it may now have, any city shall have power under and subject to the following provisions:

(a) To acquire by gift or purchase and to construct, reconstruct, improve, better or extend any works within or without the city, or partially within or partially without the city, or within any part of the city, and acquire by gift or purchase lands or rights in lands or water rights in connection therewith, including easements, rights of way, contract rights, leases, franchises, approaches, dams and reservoirs; to lease any portion of the excess or surplus capacity of any such works to any party located within or without the city, subject to the following conditions: that such capacity shall be returned or replaced by the lessee when and as needed by such city for the purposes set forth in section 50-1028, Idaho Code, as determined by the city; that the city shall not be made subject to any debt or liability thereby; and the city shall not pledge any of its faith or credit in aid to such lessee;

(b) To exercise the right of eminent domain for any of the works, purposes or use provided by this act, in like manner and to the same extent as provided in section 7-720, Idaho Code;

(c) To operate and maintain any works within or without the boundaries of the city, or partially within or without the boundaries of the city, or within any part of the city;

(d) To issue its revenue bonds hereunder to finance, in whole or in
part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works;

(e) To prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the state of Idaho and its subdivisions, for the services, facilities and commodities furnished by such works, and to provide methods of collections and penalties, including denial of service for nonpayment of such rates, fees, tolls or charges;

(f) To pledge an amount of revenue from such works (including improvement, betterment or extensions thereto, thereafter constructed or acquired) sufficient to pay said bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenues. In determining such cost, there may be included all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal and legal expenses and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to sections 50-1027 through 50-1042, Idaho Code;

(g) In the procurement of off-street parking sites, facilities, equipment and appurtenances, any city shall have power, in addition to those heretofore conferred, to pledge the net revenues to be derived from on-street parking facilities not otherwise pledged, to be combined with the rates, fees, tolls and charges to be derived from the operation of off-street parking facilities, after the payment of all operative and maintenance costs, to the payment of revenue bonds and interest thereon issued under the authority of the Revenue Bond Act.

(h) To issue bonds for the purpose of refunding any bonds theretofore issued under authority of the Revenue Bond Act and to pay accrued interest and applicable redemption premiums on the bonds to be refunded, if the bonds to be refunded are due, callable or redeemable by their terms on or prior to the date that the refunding bonds are issued, or will become due, callable or redeemable by their terms within twelve (12) months thereafter, or if the bonds to be refunded, even though not becoming due, callable or redeemable within such period, are voluntarily surrendered by the holders thereof, for cancelation at the time of the issuance of the refunding bonds. All or part of any issue may be refunded and all or part of several issues may be refunded into a single issue of refunding bonds. There may be included
with the refunding bonds, as part of a single issue, or in combination in one or more series, bonds for any other purpose or purposes for which bonds are authorized to be issued under the Revenue Bond Act. Refunding bonds shall be issued and secured in such manner as may be provided in the proceedings authorizing their issuance and as otherwise provided in the Revenue Bond Act, and such changes may be made in the security and revenue pledged to the payment of the bonds so refunded, as provided by the governing body in the proceedings authorizing such bonds. No election on the issuance of refunding bonds shall be required, but if by an increase in the amount of bonds or by changes in the security or pledged revenues, the requirements of the constitution for an election shall become applicable, or if refunding bonds are combined into a single issue with bonds authorized for nonrefunding purposes, then such bonds with changes in security or revenues, or such bonds in excess of the amount of bonds refunded, as the case may be, must have been approved at an election as otherwise provided in the Revenue Bond Act and the constitution. Refunding bonds may be exchanged for not less than a like principal amount of bonds authorized to be refunded, may be sold, or may be exchanged in part and sold in part. If sold, the proceeds of the sale, not required for the payment of expenses, and in any event, in an amount sufficient to assure the retirement of the bonds refundable, when such bonds become available for retirement, if not applied to a simultaneous payment and cancelation of the bonds refunded shall be escrowed with a bank or trust company and may be invested in United States government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing proceedings.

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 March 15, 1971.

CHAPTER 113
(H. B. No. 167)

AN ACT
AMENDING SECTION 40-2718, IDAHO CODE, RELATING TO
ANNEXATION OF ADJACENT AREAS TO A HIGHWAY DISTRICT, TO PROVIDE THAT ANNEXATION OF AN AREA IN WHICH THERE ARE NO RESIDENTS MAY BE MADE BY CONSENT OF THE GOVERNING BOARDS OF THE GAINING AND LOSING DISTRICTS.

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

SECTION 1. That Section 40-2718, Idaho Code, be, and the same is hereby amended to read as follows:

40-2718. ANNEXATION OF ADJACENT AREA TO HIGHWAY DISTRICT. — Upon petition of twenty per cent (20%) of the registered, qualified voters in any area of a county or highway district adjacent to a county-wide highway district or highway district within the limits of an adjoining county, made to the commissioners of said highway district, or in the event there be no residents in said area then upon the consent of the governing boards of both the gaining and losing county or district administering the roads in the area to be annexed, within thirty (30) days of the submission of said petition, or consent agreement, the county commissioners shall, upon determining such annexation will be for the best interests of the administration of the road system of the petitioning area and the annexing area, approve the same by resolution entered upon the minutes of the county commissioners and the minutes of the annexing district; said area outside of the county but adjacent thereto, may become attached to and operated under the highway district to which said group has petitioned to belong, all levies and assessments made thereon when certified by the commissioners of said county-wide highway district or district within the county, to the clerk of the county affected, shall be adopted and endorsed by the county commissioners of the county in which said area lies, upon the tax rolls, and the administration thereof shall conform in all particulars to the rules and regulations and laws governing the collection of tax for highway districts and apportionment as if the area were within the county. The power and ability to have annexed adjacent areas across county lines for highway administration shall be permissive regardless of the type of highway operation of the two (2) counties affected under any of the three (3) options herein provided. The effective date of annexation shall be ninety (90) days after the entry of the resolution.

Approved March 16, 1971.
CHAPTER 114
(H. B. No. 196)

AN ACT
AMENDING CHAPTER 29, TITLE 40, IDAHO CODE, RELATING TO RELOCATION AID FOR PERSONS DISPLACED BY HIGHWAY CONSTRUCTION BY AMENDING SECTION 40-2901, IDAHO CODE, TO INCLUDE THE CONSTRUCTION AND RELOCATION OF HIGHWAYS WITHIN THE PURVIEW OF THIS ACT ON A DISCRETIONARY BASIS; AMENDING SECTION 40-2902, IDAHO CODE, BY REDEFINING "DISPLACED PERSON," REDEFINING "BUSINESS," INCLUDING TIMBER PRODUCTION WITHIN THE DEFINITION OF A FARM OPERATION, REDEFINING "POLITICAL SUBDIVISION," ADDING SUBSECTION (h) TO DEFINE THE TERM "MORTGAGES," ADDING SUBSECTION (i) TO DEFINE THE TERM "HIGHWAY" OR "HIGHWAY SYSTEM," AND BY STRIKING FORMER SUBSECTIONS (h) DEFINING "INTERSTATE SYSTEM" OR "INTERSTATE HIGHWAY," (i) DEFINING "PRIMARY SYSTEM" OR "PRIMARY HIGHWAY," AND (j) DEFINING "SECONDARY SYSTEM" OR "SECONDARY HIGHWAY"; AMENDING SECTION 40-2903, IDAHO CODE, TO CONFORM ITS REFERENCES TO THE REDEFINED TERM "HIGHWAY"; AMENDING SECTION 40-2904, IDAHO CODE, TO CONFORM ITS REFERENCES TO THE REDEFINED TERM "HIGHWAY"; AMENDING SECTION 40-2905, IDAHO CODE, TO ALLOW RELOCATION PAYMENTS WHENEVER FUNDS ARE USED FOR HIGHWAY PURPOSES AND LIMITED PAYMENTS FOR TANGIBLE PERSONAL PROPERTY LOST IN MOVING OR DISCONTINUING A BUSINESS OR FARM OPERATION AND LIMITED COMPENSATION FOR RELOCATION OF REPLACEMENT BUSINESSES OR FARMS AND MAKING SUCH PAYMENTS DISCRETIONARY, INCREASING ALTERNATE RESIDENTIAL MOVING EXPENSE ALLOWANCE AND RESIDENTIAL DISLOCATION ALLOWANCE, REVISING RELOCATION PAYMENTS FOR RELOCATING BUSINESSES OR FARM OPERATIONS AND SETTING A MINIMUM AND MAXIMUM PAYMENT THEREOF IN ACCORDANCE WITH THE SCHEDULE SET FORTH AND AMENDING THE PERIOD FOR CALCULATING
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-2901, Idaho Code, be, and the same is hereby amended to read as follows:

40-2901. RELOCATION AID FOR PERSONS DISPLACED BY HIGHWAY CONSTRUCTION — LEGISLATIVE FINDING. — The legislature finds and declares that the prompt and equitable relocation and re-establishment of persons, families, businesses, farmers, and nonprofit organizations displaced as a result of the construction and relocation of primary and secondary road systems and interstate highways is a necessary highway purpose, is a cost of highway construction and is a public purpose. In order to insure that a few individuals do not suffer disproportionate injuries as a result of highway programs designed for the benefit of the
public as a whole the legislature determines and declares that relocation payments and relocation advisory assistance should may be provided to all persons so displaced in accordance with the terms and provisions of this act and the rules and regulations promulgated thereunder. The legislature finds and declares that rent supplement or purchase assistance payments to tenants and relocation payments to owner-occupants, businesses, and farmers in accordance with the provisions of this act are a public purpose and are necessary to enable all displaced persons to obtain decent, safe, and sanitary dwellings. The legislature further declares the provisions of this act shall may be applicable to all highway programs and highway construction in which federal aid highway funds are utilized.

SECTION 2. That Section 40-2902, Idaho Code, be, and the same is hereby amended to read as follows:

40-2902. DEFINITIONS. — As used in this act:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property or moves his personal property from real property acquired for state highway purposes or for a federal aid highway, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property for highway purposes.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity, excepting a farm operation, conducted primarily for the purchase and, resale, lease and rental of personal property and real property, and for the manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation, or solely for the purpose of section 40-2902(a), Idaho Code, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such displays are located on the premises on which any of the activities are conducted.

(e) "Farm operation" means any activity conducted primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
(f) "Department" means the department of highways of the state of Idaho.

(g) "Political subdivision" or "local political subdivision," means any local unit or agency of government of the state of Idaho authorized by law to build and construct roads, streets and highways, and includes but is not limited to county commissioners, commissioners of good road districts, commissioners of highway districts, mayors and councils, city managers, or the governing body of a local unit of government which administers governmental powers of a subordinate or local nature and exists and functions as a minor political division of the state of Idaho, cities and counties.

(h) "Interstate system" or "interstate highway" means any portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the Idaho board of highway directors, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways."

(i) "Primary system" or "primary highway" means any portion of the highways of this state, as officially designated, or as may hereafter be so designated, by the Idaho board of highway directors, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways."

(j) "Secondary system" or "secondary highway" means any portion of the highways of this state including streets, roads, and highways in which federal aid highway construction funds are used. The "secondary system" consists of secondary roads, streets or highways, as officially designated, or as may hereafter be so designated, by the Idaho board of highway directors, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways."

(h) "Mortgage means such class of liens, including deeds of trust, as are commonly given to secure advances on, or the unpaid purchase price of real property under the laws of the state of Idaho, together with the credit instruments, if any, secured thereby.

(i) "Highway" or "highway system" means any public thoroughfare under the jurisdiction of any agency or political subdivision of the state of Idaho as defined in section 40-107, Idaho Code.

SECTION 3. That Section 40-2903, Idaho Code, be, and the same is hereby amended to read as follows:
40-2903. RELOCATION ADVISORY ASSISTANCE. — The department and any political subdivisions are authorized, as a part of the cost of construction of highways, roads, and municipal streets, to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the state primary or secondary highway system or federal-aid highway system.

SECTION 4. That Section 40-2904, Idaho Code, be, and the same is hereby amended to read as follows:

40-2904. LOCAL RELOCATION ADVISORY ASSISTANCE OFFICES. — The department or any political subdivision may, as a part of the cost of highway construction, establish a local relocation advisory assistance office or agency to assist in obtaining relocation facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for any highway project on the state primary or secondary highway system or federal-aid highway system.

SECTION 5. That Section 40-2905, Idaho Code, be, and the same is hereby amended to read as follows:

40-2905. RELOCATION EXPENSE — COMPENSATION OPTIONS — LIMIT OF COMPENSATION FOR BUSINESS OR FARM RELOCATIONS. — (a) As a part of the cost of highway construction, the department or any political subdivision using any federal-aid highway funds for highway purposes may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, and for any actual direct losses of tangible personal property as the result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department or any political subdivision, and for actual reasonable expenses in searching for a replacement business or farm. Provided, however, the compensation authorized by this section for actual and reasonable moving expenses, actual direct losses of tangible personal property, and expenses in searching for a replacement farm or business shall be limited to relocating a displaced person, family, business or farm operation within a reasonable distance radius of fifty (50) miles from the location previously occupied and from which the displaced person has been required to move.

(b) Any displaced person who moves from a dwelling who elects to
accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to regulations and schedules established by the department, not to exceed two hundred dollars ($200) ($300), and in addition a dislocation allowance of one hundred dollars ($100) ($200).

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars ($5,000), whichever is the lesser, except that such payment shall not be less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000). In the case of a business, no payment shall be made under this subsection unless the department or the political subdivision is satisfied that the business can not be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired which is engaged in the same or a similar business. For purposes of this subsection, the term "average annual net earnings" means one half (½) of any net earnings of the business or farm operation, before federal, state and local income taxes, during the two (2) taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the department or political subdivision determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two (2) year period, or such other period as determined by the department or political subdivision. In addition to the other requirements of this act, to be eligible for the payment authorized by this subsection the business or farm operation must make its financial statements, accounting records, and state income tax returns available to the department or the political subdivision for audit for confidential use in determining the payment or payments authorized by this subsection.

SECTION 6. That Section 40-2906, Idaho Code, be, and the same is hereby amended to read as follows:

40-2906. PURCHASE ASSISTANCE TO RELOCATING OWNER-OCCUPANT – LEASE OR DOWN PAYMENT ASSISTANCE TO
RELOCATING TENANT. — (a) In addition to the payments authorized by section 40-2905, Idaho Code, the department or political subdivision as a part of the cost of highway construction, may make a payment to the owner of real property acquired for a project on the state primary or secondary-highway system purposes or federal aid highway system, which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one (1) year prior to the first written offer for the acquisition of such property. Such payment shall not exceed five fifteen thousand dollars ($5,000) and shall be the amount, if any, which, when added to the acquisition payment, equals the average price reasonable cost required for a comparable dwelling determined in accordance with standards established by the department or the political subdivision to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling that meets standards established by the department, or by a political subdivision, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project, not later than the end of the one (1) year period beginning on the date on which he received from the department or political subdivision final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. Payment under this subsection (a) will include an amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. This amount will be paid only if the dwelling acquired by the department or political subdivision was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty (180) days prior to the first written offer for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discounted rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located, as determined by the department.
or political subdivision. This amount shall also include reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) In addition to the payments authorized by section 40-2905, Idaho Code, the department or the political subdivision may, as a part of the cost of highway construction, make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (a) of this section, which dwelling was actually and lawfully occupied by such individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of such property. Such payment, not to exceed one thousand five hundred dollars ($1,500) four thousand dollars ($4,000), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two (2) four (4) years, or to make the down payment, including reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars ($4,000) except that if such amount exceeds two thousand dollars ($2,000), such person must equally match any such payment in excess of two thousand dollars ($2,000), in making the down payment.

SECTION 7. That Section 40-2910, Idaho Code, be, and the same is hereby amended to read as follows:

40-2910. RULES AND REGULATIONS. The department shall prescribe rules and regulations to implement the provisions of this act, and such other rules and regulations relating to highway relocation assistance as may be necessary under existing federal laws and rules and regulations promulgated thereunder. Such rules and regulations shall include provisions relating to:

(a) Moving expense allowance as provided by subsection (b) of section 40-2905, for a displaced person who moves from a dwelling, determined according to prescribed regulations and schedules, not to exceed two hundred dollars ($200);

(b) Standards for decent, safe and sanitary dwelling;

(c) Eligibility of displaced persons for relocation assistance payments, procedural methods whereby such persons may make application
for and claim such payments and the amounts thereof; and

(c) Other rules and regulations consistent with the provisions of this act as are deemed necessary or appropriate to carry out the provisions of this act.

SECTION 8. 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 March 16, 1971.

CHAPTER 115
(H. B. No. 231)

AN ACT
RELATING TO REGULATIONS AND EQUIPMENT FOR WATERCRAFT, REPEALING SECTIONS 39-2501 THROUGH 39-2505, IDAHO CODE; AMENDING SECTION 39-2520, IDAHO CODE, BY CLARIFYING THE LIGHTING EQUIPMENT NECESSARY ON WATERCRAFT; AMENDING SECTION 39-2522, BY REQUIRING FIRE EXTINGUISHERS ON ALL BOATS USING GASOLINE OR LIQUIFIED PETROLEUM GAS FOR PROPULSION, HEATING, OR COOKING; AMENDING SECTION 39-2523, IDAHO CODE, BY ADDING THE TERM GASOLINE TO FURTHER DEFINE BOAT ENGINES.

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

SECTION 1. That Sections 39-2501–39-2505, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 39-2520, Idaho Code, be, and the same is hereby amended to read as follows:

39-2520. LIGHTS. – (a) Every motorboat less than twenty-six (26) feet in length shall carry and display the following lights when underway from sunset to sunrise:

(1) A bright, white light aft to show all around the horizon, visible for a distance of two (2) miles. The word “visible” as used herein shall mean visible on a dark night with clear atmosphere.

(2) A combination light in the forepart of the boat lower than the white light aft, showing green to starboard and red to port, so fixed as
(a) To throw a light from dead ahead to two (2) points abaft the beam on their respective sides and visible for a distance of not less than one (1) mile.

(b) Watercraft propelled by muscular power when underway shall carry on board from sunset to sunrise, but not fixed to any part of the boat, a lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two (2) miles or more, and shall display such lantern in sufficient time to avoid collision with another watercraft.

(c) All sailboats and all motorboats twenty-six (26) feet or more in length shall carry and display when underway such additional or alternate lights as shall be required by the U. S. coast guard for watercraft of equivalent length and type.

(d) Every sailboat and every motorboat propelled by sail and machinery shall, in addition to the other lights required, carry a bright, white lantern or flashlight ready at hand which shall upon the approach of another watercraft, be exhibited and shall be flashed continually upon its sails in sufficient time to avert collision.

(e) Dinghies, tenders and other watercraft, whose principal function is as an auxiliary to other larger watercraft, when so operating need carry only a flashlight visible to other craft in the area, anything in this section to the contrary notwithstanding.

(f) Any watercraft may carry and exhibit the lights required by the Federal Regulations for Preventing Collisions at Sea, 1948, Federal Act of October 11, 1931 (33 L.C. 143-147D) as may be further amended, in lieu of the lights required by this section.

SECTION 3. That Section 39-2522, Idaho Code, be, and the same is hereby amended to read as follows:

39-2522. FIRE EXTINGUISHER. — All inboard motorboats and all other watercraft 16 feet or over in length shall carry at least one U.S. coast guard approved fire extinguisher, so placed as to be readily accessible and in such condition as to be ready for immediate and effective use. Any vessel using gasoline or liquified petroleum gas for propulsion, heating or cooking shall be provided with such number, size and type of U.S. coast guard approved fire extinguisher, capable of promptly and effectually extinguishing burning gasoline or liquified petroleum gas, as may be prescribed by the regulations of the department, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.
SECTION 4. That Section 39-2523, Idaho Code, be, and the same is hereby amended to read as follows:

39-2523. CARBURETORS. Carburetors on all gasoline engines of motorboats other than those propelled by a detachable outboard motor shall be fitted with a U. S. coast guard approved device for arresting backfire.

Approved March 16, 1971.

CHAPTER 116
(H. B. No. 105 as amended)

AN ACT
RELATING TO SCHOOL SUBDISTRICTS BY PROVIDING FOR THEIR ESTABLISHMENT; PROVIDING FOR THEIR CREATION AND NOTICE TO THE COUNTY COMMISSIONERS; POWERS AND FUNCTIONS OF SCHOOL SUBDISTRICTS, AND PROVIDING FOR THE POWER OF SCHOOL SUBDISTRICTS TO INCUR DEBT, TO ISSUE BONDS AND TO LEVY TAXES; PROVIDING THE PURPOSES AND MANNER IN WHICH DEBTS MAY BE INCURRED; PROVIDING FOR AN ELECTION ON THE QUESTION OF A TAX LEVY; AND DECLARING AN EMERGENCY.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. The board of trustees of any school district which operates four (4) or more high schools may at any time, on its own motion or upon the filing with the board of trustees of a petition so requesting signed by not less than fifty (50) school electors, call an election to submit to the qualified electors of the school district the question of the creation of one (1) or more school subdistricts. Such election shall be called, held and conducted pursuant to the provisions of chapter 4, title 33, Idaho Code. The proceedings calling such election shall set forth the boundaries of each proposed school subdistrict and shall provide for the submission of the question of the creation of each such school subdistrict to the qualified electors of the school district and to the qualified electors residing within the proposed boundaries of each such school subdistrict. No proposition for the creation of a school subdistrict shall be determined to have carried unless such proposition shall receive a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the
school district and a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the proposed school subdistrict. Whenever the creation of more than one (1) school subdistrict is submitted at the same election, separate ballots and separate propositions shall be used in voting on the question of creating each school subdistrict.

SECTION 2. Whenever a proposition for the creation of a school subdistrict shall have been approved in the manner set forth in section 1 of this act, the board of trustees of the school district shall enter in its minutes an order providing for the establishment and creation of the school subdistrict setting forth therein the legal description of the boundaries thereof and shall designate therein a name for such school subdistrict. Within ten (10) days after the entry of the order creating such school subdistrict, the board of trustees shall certify the fact of the creation of such school subdistrict to the state board of education and to the board of county commissioners of each county in which any part of the school subdistrict is located, by the filing of a certified copy of the order of the board of trustees creating and establishing the school subdistrict.

SECTION 3. Each school subdistrict created and established as provided in this act shall be a political subdivision of the state of Idaho. The board of trustees entering the order creating and establishing such school subdistrict shall be the governing body of all school subdistricts created by it, and shall possess the power to order, conduct and hold all elections in such school subdistricts for the purpose of incurring debt and issuing bonds and for the purpose of voting school plant facilities reserve fund levies, and for all other purposes.

SECTION 4. School subdistricts may incur debt and issue bonds for the purpose of acquiring, purchasing or improving a school site or sites, acquiring or constructing new school houses, remodeling existing buildings, constructing additions thereto, including all necessary furnishings and equipment, and all lighting, heating, ventilation, sanitation facilities and appliances necessary to operate the buildings of the new school subdistrict. The governing body of a school subdistrict may submit to the qualified electors of the school subdistrict the question of whether the governing body of the school subdistrict shall be empowered to issue negotiable coupon bonds of the school subdistrict in an amount and for a period of time to be named in the notice of election. Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed and the qualifications of electors voting or offering to vote shall be as provided in
sections 33-401 through 33-406, inclusive, Idaho Code. The question of the issuance of such bonds shall be approved only if the percentage of votes cast at such election were cast in favor thereof as that which is now, or may hereafter be, set by the constitution of the state of Idaho. All such bonds shall be authorized, issued and sold pursuant to the provisions of sections 33-1105 through 33-1120, inclusive, Idaho Code. No bonds of a school subdistrict may be issued, however, if the issuance of such bonds would cause the percentage of assessed valuation of taxable property within the boundaries of the school subdistrict represented by the aggregate outstanding indebtedness of the school subdistrict, when added to the percentage of the assessed valuation of taxable property represented by the aggregate outstanding indebtedness of the school district within which the school subdistrict lies, to exceed fifteen percent (15%). As used in the preceding sentence hereof, "assessed valuation," "aggregate outstanding indebtedness" and "issuance" shall have the same meanings as set forth in section 33-1103, Idaho Code. Upon the approval of the issuance of such bonds, the same may be issued by the governing body of the school subdistrict on behalf of the school subdistrict at any time within two (2) years from the date of such election. Wherever in sections 33-401 through 33-406, inclusive, Idaho Code, and in sections 33-1105 through 33-1120, inclusive, Idaho Code, reference is made to "school district;" for purposes of this act it shall be deemed to refer to school subdistricts.

SECTION 5. The governing body of a school subdistrict may call an election in the school subdistrict, pursuant to the provisions of section 33-804, Idaho Code, for the purpose of submitting to the qualified school electors of the school subdistrict the question of a levy by a school subdistrict of a school plant facilities reserve fund tax not to exceed fifteen (15) mills in each year for a period not to exceed ten (10) years.

SECTION 6. 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 March 16, 1971.
CHAPTER 117
(H. B. No. 193 as amended)

AN ACT AMENDING SECTION 19-3901, IDAHO CODE, RELATING TO CRIMINAL COMPLAINTS IN THE MAGISTRATES DIVISION OF THE DISTRICT COURTS BY PROVIDING FOR ISSUANCE OF A NOTICE TO APPEAR IN COURT IN LIEU OF ARREST FOR MISDEMEANOR OFFENSES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 19-3901, Idaho Code, be, and the same is hereby amended to read as follows:

19-3901. COMPLAINT. — All proceedings and actions before justices' courts the magistrates division of the district court for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint. Provided, however, offenses charging a violation for which an officer may issue a written traffic citation as provided by section 49-1113, Idaho Code, in the form required by section 49-1121, Idaho Code, may be commenced by a complaint containing a form of certificate by the police officer to the effect that he certifies, under the penalties provided in section 49-1113, Idaho Code, that he has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law, and such complaint shall be a part of the uniform traffic citation ticket required by section 49-1121, Idaho Code, showing the name of the person charged and the offense of which the person is charged, together with the date, time and place at which the offense allegedly occurred.

As to any misdemeanor triable by a magistrate, a law enforcement officer may in lieu of procuring a warrant of arrest and arresting the defendant issue to the defendant a summons to appear in a form to be promulgated and approved by the supreme court. Such summons shall contain a promise of the defendant to appear for arraignment in the proper court at a stated day and time and shall notify him that upon his failure to appear as promised a warrant will issue for his arrest.

If the defendant fails to appear as promised the complaint shall be presented to a magistrate and if the magistrate is satisfied therefrom that the
offense complained of has been committed, he shall issue a warrant of arrest substantially in the form provided by section 19-3903, 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 March 16, 1971.

CHAPTER 118
(H.B. No. 217)

AN ACT
AMENDING SECTION 22-503, IDAHO CODE, PERMITTING THE IMPORTATION AND SALE OF CERTIFIED SEED POTATOES FROM ANY OTHER STATE OR TERRITORY PROVIDED THEY MEET THE CERTIFICATION STANDARDS OF SUCH STATE OR TERRITORY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-503, Idaho Code, be, and the same is hereby amended to read as follows:

22-503. POTATOES FROM OTHER STATES. — All potatoes sold or offered for sale in the state of Idaho that are to be sold or offered for sale as seed potatoes from any other state or territory must be certified seed and must be unless packed in new or clean containers accompanied by a certificate of inspection describing the grade and quality thereof, and when same are offered as certified seed potatoes, said certificates shall and must show that said potatoes were packed, sealed, and tagged under comply with the certification standards of the state or territory in which the same were produced.

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 March 16, 1971.
CHAPTER 119
(H. B. No. 236)

AN ACT
RELATING TO UNLAWFUL DETAINER; REPEALING SECTION 6-311, IDAHO CODE; AMENDING CHAPTER 3, TITLE 6, IDAHO CODE BY THE ADDITION OF A NEW SECTION 6-311, IDAHO CODE, PROVIDING FOR RESTITUTION OF REAL PROPERTY TO THE OWNER THEREOF AND A BOND THEREFOR; AND AMENDING CHAPTER 3, TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 6-311A, IDAHO CODE, PROVIDING FOR SERVICE OF A WRIT OF RESTITUTION, A BOND TO STAY THE WRIT, AND MODIFICATION OF A BOND.

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

SECTION 1. That Section 6-311, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 3, Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 6-311, Idaho Code, and to read as follows:

6-311. WRIT OF RESTITUTION - BOND. - (1) The plaintiff at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described. Upon filing the complaint the plaintiff may have immediate possession of the premises as hereinafter provided by a writ of restitution issued by the judge and directed to the sheriff of the county, or constable or marshal for execution where it appears to the satisfaction of the judge, from verified complaint, or from an affidavit filed by or on behalf of the plaintiff that the defendant has defaulted in the payment of rent.

(2) Before any writ shall issue prior to judgement the plaintiff shall execute to the defendant and file in court a bond in such sum as the court or judge may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. An action to recover such damages must be commenced by the defendant in a court of competent jurisdiction.
within one (1) year from the date of entry of dismissal or of final judgement in favor of the defendant.

SECTION 3. That Chapter 3, Title 6, Idaho Code, be, and the same is hereby amended by the addition of a new section, to be known and designated as Section 6-311A, Idaho Code, and to read as follows:

6-311A. SERVICE OF WRIT — BOND TO STAY WRIT — MODIFICATION OF BOND. — (1) The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for five (5) days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided.

(2) The defendant, or person in possession of the premises within five (5) days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent, or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

(3) The plaintiff or defendant at any time, upon three (3) days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The bondsmen may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked
them touching their qualifications as bondsmen, and in the event the bondsmen shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by the defendant, and the same shall not be given within twenty-four (24) hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises.

Approved March 16, 1971.

CHAPTER 120
(H. B. No. 85)

AN ACT
AMENDING SECTION 25-1401, IDAHO CODE, RELATING TO REMOVING OR DRIVING ANIMALS FROM THE BOUNDARIES OF THE STATE OTHER THAN BY RAIL, BY PROVIDING A PERMIT SYSTEM BY WHICH A PERSON WHO DRIVES ANIMALS FROM THE BOUNDARIES OF THE STATE FOR SEASONAL GRAZING PURPOSES, TO BE RETURNED TO THE STATE, MAY APPLY TO THE BRAND INSPECTOR FOR SUCH PERMIT, AUTHORIZING A LESSER CHARGE FOR SUCH PERMIT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 25-1401, Idaho Code, be, and the same is hereby amended to read as follows:

25-1401. DRIVING ANIMALS FROM STATE — INSPECTION OF BRANDS — PENALTY. — Any one desiring to remove or drive any horses, mules or cattle from the boundaries of this state by any means other than by rail shall, before doing so, apply to the brand inspector within the county bordering on such state to which said animals are to be driven to inspect the same for marks and brands, and on such application (or without said application if said officer has knowledge of such removal) said brand inspector shall immediately inspect said animals for brands and marks and keep an accurate record of the same with the name and residence of owner
or shipper and name, sex and kind of animals. If said inspector finds that the animals have brands that are not owned by the person claiming the same, then such person shall be required to produce a bill of sale or other satisfactory evidence of ownership. Upon such proof he shall give the person a certificate stating the number and kind of animals and their marks and brands, and thereupon the said person shall be permitted to drive said animals from this state. But otherwise he shall not be so permitted, and in case said person shall, without said certificate, drive the same from the state he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not exceeding $300.00 three hundred dollars ($300) or be imprisoned in the county jail not exceeding six (6) months, or be punished by both such fine and imprisonment. Any person desiring to remove any horses, mules or cattle from the boundaries of this state by any means other than by rail for the purpose of seasonally grazing the animals in an adjoining state, shall apply before doing so to the brand inspector of the county bordering on such state, for a written permit; and such permit shall be issued without charge. If in the opinion of the state brand board an inspection is deemed advisable, such inspection shall be made at one half the usual brand inspection fee and the provisions of section 25-232, Idaho Code, and the provisions of section 25-2907, Idaho Code, shall not apply for the purposes of this section.

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 March 16, 1971.

CHAPTER 121
(H. B. No. 09)

AN ACT
AMENDING SECTION 67-5303, IDAHO CODE, RELATING TO THE APPLICATION OF THE PERSONNEL SYSTEM TO STATE EMPLOYEES, BY EXEMPTING EMPLOYEES AND OFFICERS OF CERTAIN COMMODITY COMMISSIONS, BOARDS AND COUNCILS FROM THE PROVISIONS OF THE PERSONNEL SYSTEM, AND
Providing that Employees of Commissions shall continue in employment.

Be it enacted by the Legislature of the State of Idaho:

Section 1. That Section 67-5303, Idaho Code, be, and the same is hereby amended to read as follows:

67-5303. Application to State Employees. — All departments of the state of Idaho and all employees in such departments, except those employees specifically exempt, shall be subject to this act and to the system of personnel administration which it prescribes. Exempt employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and state superintendent of public instruction who are appointed on and after the effective date of this act.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho Supreme Court and district courts.

(h) Assistant attorneys general attached to the office of the attorney general.

(i) Officers and members of the teaching staffs of state institutions and the professional staff of the Idaho department of education administered by the board of regents and the board of education.

(j) Employees of the Idaho military department under federal control or in a position for which membership in the Idaho national guard or Idaho air national guard is a condition of employment.

(k) Patients, inmates or students employed in state institutions.
(l) Persons employed by emergency appointment.

(m) Persons retained under independent contract for special or temporary projects.

(n) Persons employed in positions which are seasonal in nature in which employment will not exceed \(4,000\) one thousand (1,000) working hours in any twelve (12) month working period.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey advertising commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho prune commission, as provided in chapter 30, title 22, Idaho Code; the Idaho hop grower’s commission, as provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint grower’s commission, as provided in chapter 38, title 22, Idaho Code; the state board of sheep commissioners, as provided in chapter 1, title 25, Idaho Code; the state brand board, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

SECTION 2. Employees of any commodity commissions mentioned in subsection (o) above on the effective date of this act shall be continued in employment with the same rights, privileges, and benefits as existed prior to the enactment of this act, and each of the commodity commissions shall take all necessary actions to carry the provisions of this section into effect.

Approved March 16, 1971.
CHAPTER 122
(H. B. No. 197)

AN ACT
AMENDING SECTION 41-601, IDAHO CODE, PROVIDING FOR THE INCLUSION OF ALL OFFICE FURNITURE, OFFICE EQUIPMENT, PRIVATE PASSENGER AUTOMOBILES, DEEMED NECESSARY FOR CONDUCT OF INSURANCE BUSINESS, AS ASSETS OF AN INSURER; AMENDING SECTION 41-603, IDAHO CODE, BY EXCEPTION CERTAIN PROPERTY FROM THE EXCLUSION OF ALLOWABLE ASSETS; AMENDING SECTION 41-614, IDAHO CODE, BY DESCRIBING THE METHODS BY WHICH SECURITIES OTHER THAN THOSE REFERRED TO IN SECTION 41-613 ARE TO BE VALUED; AMENDING SECTION 41-706, IDAHO CODE, BY RELIEVING THE RESTRICTION CONTAINED THEREIN AS THE SAME WOULD APPLY TO ASSETS SUBJECT TO 41-715 AND 41-733, IDAHO CODE, AND BY PROVIDING THAT THE RESTRICTION OF OWNERSHIP OF TEN PER CENT OF OUTSTANDING STOCK OF ANY ONE CORPORATION DOES NOT APPLY TO SUBSIDIARIES, OR COMPANION COMPANIES DESCRIBED IN SECTIONS 41-715 AND 41-733, IDAHO CODE; AMENDING SECTION 41-714, IDAHO CODE, BY INCREASING THE PERCENTAGE OF ASSETS OF AN INSURER THAT MAY BE INVESTED IN COMMON SHARES OF STOCK OF A SOLVENT INSTITUTION AND MAKING SUCH PERCENTAGE INVESTMENT IN ADDITION TO THE OWNERSHIP OF SHARES OF A SUBSIDIARY CORPORATION AND PROVIDING FOR INVESTMENTS IN SUBSIDIARY CORPORATIONS TO BE GOVERNED BY SECTION 41-733, IDAHO CODE; AMENDING SECTION 41-720, IDAHO CODE, BY ALLOWING INVESTMENTS IN TIME CERTIFICATES IN SAVINGS AND LOAN ASSOCIATIONS AND BANKS AND STRIKING THE RESTRICTION AS TO AMOUNT THAT MAY BE DEPOSITED IN SAVINGS ACCOUNTS OR TIME CERTIFICATES OF DEPOSIT IN BANKS; AMENDING SECTION 41-731, IDAHO CODE, BY EXCLUDING INVESTMENTS IN SUBSIDIARIES AS PROVIDED IN SECTION 41-733, IDAHO CODE, FROM THE LIMITATIONS OF THIS SECTION; AMENDING SECTION 41-733, IDAHO CODE, BY GRANTING A SUBSIDIARY
CORPORATION THE RIGHT TO OWN REAL PROPERTY AND AUTHORIZING AN INSURER TO INVEST AN AMOUNT NOT TO EXCEED FIFTEEN PER CENT OF ASSETS IN SHARES OF ONE OR MORE SUBSIDIARY BUSINESS CORPORATIONS; AMENDING SECTION 41-2003, IDAHO CODE, TO REDUCE THE REQUIRED NUMBER OF EMPLOYEES UNDER A GROUP INSURANCE PLAN ISSUED TO AN EMPLOYER FROM TEN TO FIVE INDIVIDUALS; AMENDING SECTION 41-2006, IDAHO CODE, TO REDUCE THE REQUIRED NUMBER OF EMPLOYEES UNDER A GROUP INSURANCE POLICY ISSUED TO A DEPARTMENTAL HEAD OR TO AN ASSOCIATION OF PUBLIC EMPLOYEES FORMED FOR PURPOSES OTHER THAN OBTAINING INSURANCE FROM TEN PERSONS TO FIVE PERSONS; AMENDING SECTION 41-2007, IDAHO CODE, BY REDUCING THE REQUIRED NUMBER OF PERSONS UNDER A POLICY ISSUED TO THE TRUSTEES OF A FUND IN THIS STATE BY TWO OR MORE EMPLOYERS IN THE SAME INDUSTRY FROM ONE HUNDRED TO TWENTY-FIVE AND TO REDUCE THE REQUIRED AVERAGE OF EMPLOYEES PER EMPLOYER UNIT FROM FIVE TO FOUR PERSONS; AMENDING SECTION 41-2856, IDAHO CODE, BY ALLOWING A DOMESTIC STOCK INSURER TO MERGE OR CONSOLIDATE WITH AN ORDINARY BUSINESS CORPORATION HAVING AS THEIR PRINCIPAL ASSETS, CASH OR ASSETS OF A CHARACTER ALLOWED BY INVESTMENT BY DOMESTIC INSURERS, PROVIDING THE SURVIVING CORPORATION SHALL BE A DOMESTIC OR FOREIGN STOCK INSURER, AND, PROVIDING THAT THE MERGER PLAN MAY PROVIDE FOR THE RESTATEMENT OF THE CAPITAL AND SURPLUS ACCOUNTS OF THE SURVIVING CORPORATION AND REQUIRING ANY REORGANIZATION OF CAPITAL OR SURPLUS ACCOUNT MUST BE INDICATED ON THE ANNUAL FINANCIAL STATEMENT.

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

SECTION 1. That Section 41-601, Idaho Code, be, and the same is hereby amended to read as follows:

41-601. "ASSETS" DEFINED. — In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) Cash in the possession of the insurer, or in transit under its control,
and including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties and loans acquired or held in accordance with this code, and in connection therewith the following items:
(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.
(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.
(c) Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.
(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.
(e) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of eighteen (18) months be allowed as an asset.
(f) Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.
(g) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the state of Idaho, any department, board, agency, or institution thereof, or any other political subdivision of the state of Idaho, including municipalities or specially chartered subdivisions, or by the United
States government or by any of its instrumentalities.

(6) Instalment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply.

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 41-511, Idaho Code.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him.

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars ($25,000), which cost shall be amortized in full over a period not to exceed ten (10) calendar years.

(12) All office equipment, office furniture, private passenger automobiles, deemed necessary for conduct of insurance business, the aggregate amount of which shall not at any one time exceed one percent (1%) of the other assets of the insurer.

(13) All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein.

(14) Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

SECTION 2. That Section 41-603, Idaho Code, be, and the same is hereby amended to read as follows:

41-603. ASSETS NOT ALLOWED. – In addition to assets impliedly excluded by the provisions of section 41-601, Idaho Code, of this chapter, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:
(1) Good will, trade names and other like intangible assets.

(2) Advances to officers (other than policy loans) whether secured or not, and advances to employees, agents and other persons on personal security only.

(3) Stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit.

(4) Furniture, fixtures, furnishings, safes, vehicles (except as authorized in paragraph 12, section 41-601, Idaho Code), libraries, stationery, literature, and other equipment, machines, and supplies (other than data processing and accounting systems authorized under section 41-601 (11), Idaho Code), except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under section 41-726 of this code and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to chapter 7 of this code, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(5) The amount, if any, by which the aggregate book value of investments is carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

SECTION 3. That Section 41-614, Idaho Code, be, and the same is hereby amended to read as follows:

41-614. VALUATION OF OTHER SECURITIES. — (1) Securities, other than those referred to in section 41-613, Idaho Code, held by an insurer may be valued, in the discretion of the commissioner:—

(a) at their market value if market value can reasonably be ascertained; or
(b) at their fair value determined by a generally accepted method of appraisal; or
(c) at the insurer’s discretion, at cost, when cost is lower than market value or such appraised value.

41-614. VALUATION OF OTHER SECURITIES. — (1) Securities, other than those referred to in section 41-613, Idaho Code, held by an insurer may be valued, in the discretion of the commissioner:—

(a) at their market value if market value can reasonably be ascertained, or
(b) if an insurer, at their book value, or
(c) net worth of the company if audited, or
(d) acquisition cost adjusted in accordance with generally accepted accounting principles, or
(e) any other value which the insurer can substantiate to the
satisfaction of the commissioner of insurance.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, according to a generally accepted method of computation approved by the commissioner.

SECTION 4. That Section 41-706, Idaho Code, be, and the same is hereby amended to read as follows:

41-706. DIVERSIFICATION OF INVESTMENTS. — An insurer shall invest in or hold as assets categories of investments within applicable limits as follows only:

(1) One person. An insurer shall not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person, institution, corporation, or municipal corporation, aggregating an amount exceeding seven per cent (7%) of the insurer's assets. This restriction shall not apply as to general obligations of the United States of America or of any state or include policy or annuity contract loans made under section 41-718 or to assets subject to sections 41-715 or 41-733, Idaho Code.

(2) Voting stock. An insurer shall not invest in or hold at any one time more than ten per cent (10%) of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or a companion company or companies under substantially the same management at the time of purchase, as referred to in sections 41-715 or 41-733, Idaho Code which subsidiary is engaged exclusively in a business properly incidental to the insurance business of the insurer, or to stock of an insurer acquired under section 41-715.

(3) Minimum capital. An insurer (other than title insurer) shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections of this chapter: Section 41-707, Idaho Code, (public obligations), and section 41-721, Idaho Code, (real estate mortgages and contracts).

(4) Life insurance reserves. A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts in force, in cash and/or the securities or investments allowed under this chapter, other than in common stocks,
insurance stocks and stocks of subsidiaries of the insurer.

(5) Other specific limits. Limits as to investments in the category of real estate shall be as provided in section 41-728, Idaho Code; and other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

SECTION 5. That Section 41-714, Idaho Code, be, and the same is hereby amended to read as follows:

41-714. COMMON STOCKS. — After satisfying the requirements of section 41-706(3) and (4), Idaho Code, (investment of capital and life reserves), a life an insurer or life and disability insurer may invest funds in an aggregate amount not in excess of ten fifteen per cent (15%) of its assets in common shares of stock of any solvent institution existing under the laws of the United States or of any state, district or territory thereof that qualify as a sound investment, including in addition to the shares of a substantially owned or wholly owned subsidiary corporation. Other insurers may have so invested not to exceed fifteen per cent (15%) of assets.

For the purpose of determining the investment limitation imposed by this section, the insurer shall value securities purchased pursuant subject to the provisions of this section at the cost of the security or at the market value of the security, whichever is lower. However, investments in the shares of subsidiaries or companion insurance companies shall be governed by sections 41-715, Idaho Code and 41-733 of this chapter.

The limitations as to investment in common stocks as provided herein shall not apply to nor limit the right of investments in investment trust securities as provided for in section 41-716, Idaho Code.

SECTION 6. That Section 41-720, Idaho Code, be, and the same is hereby amended to read as follows:

41-720. SAVINGS AND SHARE ACCOUNTS. — An insurer may invest or deposit any of its funds in time certificates or share or savings accounts of savings and loan associations, or in time certificates or savings accounts or time certificates of deposit of banks, and except funds may be deposited in any one such savings and loan institution only to the extent that such an account is insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation.

SECTION 7. That Section 41-731, Idaho Code, be, and the same is hereby amended to read as follows:

41-731. PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING. — (1) In addition to investments excluded under other
provisions of this code, an insurer shall not directly or indirectly invest in or loan its funds upon the security of:

(a) Issued shares of its own capital stock, except for the purpose of mutualization under section 41-2854, Idaho Code, or in connection with a plan approved by the commissioner for purchase of such shares by the insurer's officers, employees, or agents, or for other reasonable purposes under a plan filed with and approved by the commissioner. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.

(b) Except with the commissioner's consent, any security issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, controlling stockholders, and the spouses and children of any of the foregoing individuals. Investments in subsidiaries under sections 41-706(2), and 41-715 and 41-733, Idaho Code, shall not be subject to this provision.

(c) Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the insurer, or the spouse or child of any of the foregoing individuals, except as to policy loans authorized under section 41-718, Idaho Code.

(d) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this chapter.

(2) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

SECTION 8. That Section 41-733, Idaho Code, be, and the same is hereby amended to read as follows:

41-733. SUBSIDIARY INVESTMENTS. (1) An insurer may invest in the stock of its subsidiary insurance corporation formed or acquired by it, or in the stock of its subsidiary business corporation or corporations formed and engaged solely in any one or more of the following businesses:

(a) In any business necessary or incidental to the convenient operation of the insurer's insurance business or to the administration of any of its lawful affairs;

(b) Providing any actuarial, computer, data processing, accounting, claims, appraisal, collection, loss prevention or safety engineering and similar services;

(c) Real property ownership, management and development;
(d) Premium financing;
(e) Financing of agents of the insurer;
(f) Acting as investment adviser and principal underwriter or investment adviser or principal underwriter of a management company or management companies (mutual funds), registered as such under the Investment Companies Act of 1940;
(g) Financial and investment counseling services;
(h) Administration of self-insurance plans;
(i) Administration of self-insured pension and similar plans, or the self-insured portions of such plans;
(j) Securities broker-dealer;
(k) Escrow services;
(l) Trust services with respect to funds payable or paid by it under its insurance contracts.

(2) For the purposes of this section a "subsidiary" is a corporation of which the insurer owns sufficient stock to give it effective control.

(3) All of the insurer's investments under this section shall be deemed to be common stocks for the purposes of the limitations imposed by sections 41-714 and 41-715 of the Idaho Insurance Code. After satisfying the requirements of section 41-706(3) and (4), Idaho Code, (investment of capital and life reserves) an insurer, in addition to other investments permitted by this chapter, may invest an amount not to exceed fifteen percent (15%) of assets, directly or indirectly, in the shares of one (1) or more subsidiary business corporations acquired pursuant to the provisions of this section.

SECTION 9. That Section 41-2003, Idaho Code, be, and the same is hereby amended to read as follows:

41-2003. EMPLOYEE GROUPS. - The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one (1) or more subsidiary corporations, and the employees, individual proprietors, and
partners of one (1) or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation, by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ten (10) five (5) employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

SECTION 10. That Section 41-2006, Idaho Code, be, and the same is hereby amended to read as follows:

41-2006. PUBLIC EMPLOYEE GROUPS. – The lives of a group of individuals may be insured under a policy issued to the departmental head or to an association of public employees formed for purposes other than
obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five per cent (75%) of the number of employees eligible for membership in such classes, which association or departmental head shall be deemed the policyholder, to insure members of such association or public employees for the benefit of persons other than the departmental head, the association or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the members of the association or employees of the department, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, either from the association's own funds, or from charges collected from the insured members or employees specifically for the insurance, or from both. Any charges collected from the insured members or employees specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be collected through deductions by the employer from salaries of the members or employees. Such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five per cent (75%) of the then eligible members of the association or employees of the department, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make the required deductions from salary.

(3) Charges collected from the insured members or employees specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four (4) reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members or employees regardless of attained age.

(4) The policy must cover at least ten (10) five (5) persons at the date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members, employees, or by the association. Such amounts shall in no event exceed three thousand dollars ($3,000) in the case of any member or employee, and shall not exceed five hundred dollars ($500) in the case of retired members or employees and members or employees over age sixty-five (65).
(6) As used herein "employees" means employees of the United States government, or of any state, or any political subdivision or instrumentality of any of them.

(7) Groups heretofore or hereafter written under section 59-1201, Idaho Code, are not subject to this section.

SECTION 11. That Section 41-2007, Idaho Code, be, and the same is hereby amended to read as follows:

41-2007. TRUSTEE GROUPS. — The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established in this state by two (2) or more employers in the same industry, provided a majority of the employees to be insured of each employer are located within this state, or to the trustees of a fund established by one (1) or more labor unions, or by one (1) or more employers and one (1) or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners of an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees, or their employees, or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured
persons specifically for their insurance may be placed in force only if at least seventy-five per cent (75%) of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least one hundred (100) twenty-five (25) persons and not less than an average of five (5) four (4) persons, other than individual proprietors or partners, per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if

(a) Either (i) the participating employers constitute at date of issue at least sixty per cent (60%) of those employer members whose employees are not already covered for group life insurance or (ii) the total number of persons covered at date of issue exceed six hundred (600); and

(b) The policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

SECTION 12. That Section 41-2856, Idaho Code, be, and the same is hereby amended to read as follows:

41-2856. MERGERS AND CONSOLIDATIONS OF STOCK INSURERS. — (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers, or ordinary business corporations having as their principal assets, cash or assets of a character allowed by investment by domestic insurers pursuant to the provisions of chapter 7, title 41, Idaho Code, provided the surviving corporation shall be a domestic or foreign stock insurer, by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2), (3) and (4) below.

(2) The agreement and plan of merger may provide for the restatement of the capital and surplus accounts of the surviving corporation, constituting all surplus in excess of stated capital, borrowed surplus and allowance for
non-admitted assets, if any, as unassigned surplus, thereby increasing or decreasing the stated capital or gross paid in and contributed surplus accounts of the constituent corporations and providing additional surplus in any forms specified in the agreement and plan of merger; provided any reorganization of capital or surplus account must be indicated on the annual financial statement.

(2)(3) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon after notice to the stockholders of each insurer involved. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) Is contrary to law; or
(b) Inequitable to the stockholders of any insurer involved; or
(c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere; or
(d) Is subject to other material and reasonable objections.

(2)(4) No director, officer, agent or employee of any insurer party to such merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

(4)(5) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(5)(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(6)(7) Reinsurance of all or substantially all of the insurance in force of an insurer by another insurer, shall also be subject to the provisions of this section as if a merger.

Approved March 16, 1971.
CHAPTER 123
(H. B. No. 72)

AN ACT
AMENDING SECTION 44-1502, IDAHO CODE, TO PROVIDE THAT THE
MINIMUM WAGE RATE FOR EMPLOYEES AS DEFINED IN
CHAPTER 15, TITLE 44, IDAHO CODE, SHALL BE INCREASED ON JULY 1, 1971, TO ONE DOLLAR AND FORTY CENTS PER HOUR AND ON JULY 1, 1972, TO ONE DOLLAR AND SIXTY CENTS PER HOUR.

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

SECTION 1. That Section 44-1502, Idaho Code, be, and the same is hereby amended to read as follows:

44-1502. MINIMUM WAGES. - Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than one dollar and fifteen cents ($1.15) commencing February 1, 1968 and one dollar and twenty-five cents ($1.25) commencing February 1, 1969 one dollar and forty cents ($1.40) commencing July 1, 1971 and one dollar and sixty cents ($1.60) commencing July 1, 1972 per hour for employment.

Approved March 16, 1971.

CHAPTER 124
(H. B. No. 73, as amended, as amended)

AN ACT
TO BE CITED AS THE "WORKMEN'S COMPENSATION LAW", PROVIDING A COMPREHENSIVE RECODIFICATION OF THE EXISTING WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASE COMPENSATION LAWS; REPEALING CHAPTERS 1, 2, 3, 4, 5, 6, 7, 8, 10, 11 AND 12, TITLE 72, IDAHO CODE, AS OF EFFECTIVE DATE OF THIS ACT WITH PROVISION THAT SAID CHAPTERS REMAIN IN EFFECT AS TO INJURIES SUFFERED AND OCCUPATIONAL DISEASES MANIFESTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT; ADDING NEW CHAPTERS ONE THROUGH EIGHT, TITLE 72, IDAHO CODE; DEFINING TERMS;
PROVIDING FOR COMPENSATION, INCLUDING MEDICAL AND RELATED SERVICES AND APPLIANCES TO EMPLOYEES AND THEIR DEPENDENTS, INCLUDING BURIAL EXPENSES, FOR ACCIDENTAL PERSONAL INJURIES AND FOR OCCUPATIONAL DISEASES ARISING OUT OF AND IN THE COURSE OF PRIVATE AND PUBLIC EMPLOYMENT, INCLUDING INMATES VOLUNTARILY OR INVOLUNTARILY CONFINED IN PUBLIC INSTITUTIONS, AND INMATES OF NURSING AND REST HOMES; PROVIDING CLASSIFICATIONS, MANNER OF COMPUTING AND AMOUNTS OF COMPENSATION, AND PERSONS TO WHOM PAYABLE; PROVIDING THE PROCEDURE IN OBTAINING COMPENSATION; PRESCRIBING THE RIGHTS, DUTIES, OBLIGATIONS AND LIABILITIES OF EMPLOYERS, EMPLOYEES AND SURETIES; PROVIDING FOR SECURING THE PAYMENT OF COMPENSATION AND FOR REGULATING CONTRACTS SECURING ITS PAYMENT; CREATING THE INDUSTRIAL SPECIAL INDEMNITY FUND, AND PROVIDING FOR ITS ADMINISTRATION AND PAYMENTS THEREFROM; CREATING AN INDUSTRIAL COMMISSION OF THREE MEMBERS AND PROVIDING FOR THEIR QUALIFICATIONS AND APPOINTMENT AND FOR APPOINTMENT OF HEARING OFFICERS, EXAMINERS AND REFEREES, AND PRESCRIBING THEIR POWERS AND DUTIES; PRESCRIBING LOCATIONS OF THE COMMISSION'S OFFICES; EMPOWERING THE COMMISSION TO APPOINT A CHAIRMAN AND SECRETARY, TO EMPLOY REQUISITE PERSONNEL AND TO PRESCRIBE THEIR DUTIES; PROVIDING FOR PAYMENT OF SALARIES AND EXPENSES; CREATING THE INDUSTRIAL ADMINISTRATION FUND AND PROVIDING FOR ITS ADMINISTRATION AND PAYMENTS THEREFROM; VESTING POWER IN THE COMMISSION TO ADOPT MINIMUM SAFETY STANDARDS, PROCEDURES FOR THEIR ENFORCEMENT, FOR HEARINGS AND FOR REVIEWS OF THE DETERMINATIONS IN SAFETY MATTERS; PROVIDING APPELLATE PROCEDURE; PROVIDING FOR THE ENFORCEMENT OF AWARDS; PROVIDING FOR PERIODIC REPORTS BY THE COMMISSION OF ITS AFFAIRS; PROVIDING FOR THE COMMISSION'S COOPERATION WITH OTHER AGENCIES; PROVIDING SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE FOR THIS ACT.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. This act is a comprehensive recodification of the workmen’s compensation and occupational disease compensation laws of the state of Idaho.

SECTION 2. Chapters 1, 2, 3, 4, 5, 6, 7, 8, 10, 11 and 12, Title 72, Idaho Code, and other acts and parts of acts inconsistent with this law are hereby repealed, such repeal to be effective as of the effective date of this law, provided that said chapters, acts and parts of acts shall remain in effect as to injuries suffered and occupational diseases manifested prior to the effective date of this law.

SECTION 3. The workmen’s compensation law of the state of Idaho is hereby enacted as follows:

TITLE 72
WORKMEN'S COMPENSATION LAW
CHAPTER 1
SHORT TITLE — DEFINITIONS

72-101. SHORT TITLE. — This law may be cited as the workmen’s compensation law.

72-102. DEFINITIONS. — Words and terms used in the workmen’s compensation law, unless the context otherwise requires, are defined in the subsections which follow.

(1) “Alien” means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(2) “Beneficiary” means any person who is entitled to income benefits or medical and related benefits under this law.

(3) “Burial expenses” means a sum, not to exceed seven hundred and fifty dollars ($750) for funeral and burial or cremation, together with the actual expenses of transportation of the employee’s body to his place of residence within the United States or Canada.

(4) “Commission” means the industrial commission.

(5) “Compensation” used collectively means any or all of the income benefits and the medical and related benefits and medical services.

(6) “Death” means death resulting from an injury or occupational disease.

(7) Dependency limitations.

(a) “ Adopted” and “adoption” include cases where persons are treated
as adopted as well as those of legal adoption unless legal adoption is specifically provided.

(b) "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

(c) "Child" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

(d) "Grandchild" includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

(e) "Parent" includes stepparents and parents by adoption.

(f) "Grandparent" includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

(8) "Disability", except for purposes of sections 72-428 and 72-429 of this act, relating to scheduled and nonscheduled permanent disabilities, means a decrease in wage earning capacity due to injury or occupational disease.

(9) "Employee" is synonymous with "workman" and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212 unless an election as provided in section 72-213 has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(10) "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed. If the employer is secured, it means his surety so far as applicable.

(11) "Gender and number". The masculine gender includes the feminine and neuter; "husband" or "wife" includes "spouse"; the singular number includes the plural and the plural the singular.
(12) "Income benefits" means payments provided for or made under the provisions of this law to the injured employee disabled by an occupational disease, or his dependents in case of death, excluding medical and related benefits.

(13) "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

(14) "Injury" and "accident".

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the workmen's compensation law.

(b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

(15) "Medical and related benefits" means payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits.

(16) "Medical services" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities and supplies.

(17) "Occupational Diseases".

(a) "Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment.

(b) "Contracted" and "incurred", when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.

(c) "Disablement", except in the case of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last
occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

(d) "Disablement", in the case of silicosis, means the event of first becoming actually incapacitated, because of such disease, from performing any work in any remunerative employment; and "disability" means the state of being so incapacitated.

(e) "Silicosis" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO₂) dust.

(18) "Outworker" means a person to whom articles or materials are furnished to be treated in any way on premises not under the control or management of the person who furnished them.

(19) "Person" means the state or any political subdivision thereof, or any individual, partnership, firm, association, trust, corporation, including the state insurance fund, or any representative thereof.

(20) "Physician" means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses.

(21) "Secretary" means the secretary of the commission.

(22) "Self-insurer" means an employer who has been authorized under the provisions of this law to carry his own liability to his employees covered by this law.

(23) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(24) "Surety" means any insurer authorized to insure or guarantee payment of workmen's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.

(25) "United States", when used in a geographic sense, means the several states; the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the territories of the United States.

(26) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease means the employee's money payments for services as calculated under section 72-419 of this act, and shall additionally include the reasonable market value of board, rent,
housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(27) "Wages" and "wage earning capacity" after the injury or disablement from occupational disease shall be presumed to be the actual earnings after the injury or disablement, which presumption may be overcome by showing that those earnings do not fairly and reasonably represent wage earning capacity; in such a case wage earning capacity shall be determined in the light of all factors and circumstances which may affect the worker's capacity to earn wages.

(28) "Workmen's compensation law" means and includes the workmen's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

CHAPTER 2

SCOPE COVERAGE - LIABILITY

72-201. DECLARATION OF POLICE POWER. - The common law system governing the remedy of workmen against employers for injuries received and occupational diseases contracted in industrial and public work is inconsistent with modern industrial conditions. The welfare of the state depends upon its industries and even more upon the welfare of its wageworkers. The state of Idaho, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for injured workmen and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as is otherwise provided in this act, and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as is in this law provided.

72-202. INTERSTATE COMMERCE. - This law shall affect the liability of employers engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

72-203. EMPLOYMENTS COVERED. - This law shall apply to all public employment and to all private employment not expressly exempt by the provisions of section 72-212.
72-204. PRIVATE EMPLOYMENT — COVERAGE. — The following shall constitute employees in private employment and their employers subject to the provisions of this law:

(1) A person performing service in the course of the trade, profession or occupation of an employer.

(2) A person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.

(3) An officer of a corporation.

(4) "Employment", in the case of private employers, includes employment only in a trade or occupation which is carried on by the employer for the sake of pecuniary gain and also includes any of the pursuits specified in section 72-212, when the employer shall have elected to come under the law as provided in section 72-213.

72-205. PUBLIC EMPLOYMENT GENERALLY — COVERAGE. — The following shall constitute employees in public employment and their employers subject to the provisions of this law:

(1) Every person in the service of the state or of any political subdivision, or agency, institution or instrumentality thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties.

(2) Every person in the service of a county, city, or any political or quasi-political subdivision or agency, institution or instrumentality thereof, or of any municipal or quasi-municipal corporation, association or body of persons, or of any unit having the power of taxation.

(3) Members of the Idaho national guard while on duty, and participants in the Idaho Youth Conservation Project under the supervision of the Idaho state forester.

(4) Every person who is a member of a volunteer fire or police department shall be deemed, for the purposes of this law, to be in the employment of the political subdivision or municipality where the department is organized.

(5) Every person who is a regularly enrolled volunteer member or trainee of the department of disaster and civil defense, or of a civil defense corps, shall be deemed, for the purposes of this law, to be in the employment of the state.
72-206. IDAHO YOUTH CONSERVATION PROJECT — COVERAGE. — The benefits secured by section 72-205 of this act to members of the Idaho Youth Conservation Project under the supervision of the Idaho state forester, while on duty, shall be in accordance with the provisions of section 56-609, Idaho Code.

72-207. PUBLIC EMPLOYMENT — RELIEF WORK. — Whenever any public or municipal corporation mentioned in section 72-205 of this act shall accept, sponsor, take charge of or manage any work or project for the purpose of relief or assisting unemployment, wherein any part or all of the funds used on such project are granted by the United States of America or by the state of Idaho, the persons so working upon such project shall be deemed employees of the public or municipal corporation so sponsoring, accepting, taking charge of or managing such work or project.

72-208. INJURIES NOT COVERED — WILLFUL INTENTION — INTOXICATION. — (1) No compensation shall be allowed by the employee's willful intention to injure himself or to injure another.

(2) If an injury is the proximate result of an employee’s intoxication, all income benefits shall be reduced by fifty percent (50%), provided that such reduction shall not apply where the intoxicants causing the employee's intoxication were furnished by the employer or where the employer permits the employee to remain at work with knowledge by the employer or his supervising agent that the employee is intoxicated.

72-209. EXCLUSIVENESS OF LIABILITY OF EMPLOYER. — (1) Subject to the provisions of section 72-223, the liability of the employer under this law shall be exclusive and in place of all other liability of the employer to the employee, his spouse, dependents, heirs, legal representatives or assigns.

(2) The liability of an employer to another person who may be liable for or who has paid damages on account of an injury or occupational disease or death arising out of and in the course of employment of an employee of the employer and caused by the breach of any duty or obligation owed by the employer to such other person, shall be limited to the amount of compensation for which the employer is liable under this law on account of such injury, disease, or death, unless such other person and the employer agree to share liability in a different manner.

(3) The exemption from liability given an employer by this section shall also extend to the employer's surety and to all officers, agents, servants and employees of the employer or surety, provided that such exemptions
from liability shall not apply in any case where the injury or death is proximately caused by the willful or unprovoked physical aggression of the employer, its officers, agents, servants or employees, the loss of such exemption applying only to the aggressor and shall not be imputable to the employer unless provoked or authorized by the employer, or the employer was a party thereto.

72-210. EMPLOYER'S FAILURE TO INSURE LIABILITY. — If an employer fails to secure payment of compensation as required by this act, an injured employee, or one contracting an occupational disease, or his dependents or legal representative in case death results from the injury or disease, may claim compensation under this law and shall be awarded, in addition to compensation, an amount equal to ten percent (10%) of the total amount of his compensation together with costs, if any, and reasonable attorney's fees if he has retained counsel.

72-211. EXCLUSIVENESS OF EMPLOYEE'S REMEDY. — Subject to the provisions of section 72-223, the rights and remedies herein granted to an employee on account of an injury or occupational disease for which he is entitled to compensation under this law shall exclude all other rights and remedies of the employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury or disease.

72-212. EXEMPTIONS FROM COVERAGE. — None of the provisions of this law shall apply to the following employments unless coverage thereof is elected as provided in section 72-213.

(1) Household domestic service.
(2) Casual employment.
(3) Employment of outworkers.
(4) Employment of members of an employer's family dwelling in his household.
(5) Employment which is not carried on by the employer for the sake of pecuniary gain.
(6) Employment of a working member of a partnership.
(7) Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States.
(8) Agricultural pursuits. Agricultural pursuits, as used herein, shall include the raising or harvesting of any agricultural or horticultural commodity including the raising, pelting, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife raised in captivity, on enclosed lands and public ranges.
72-213. ELECTION OF EXEMPT COVERAGE. — An employer engaged in any of the exempt occupations listed in section 72-212 may elect coverage thereof by a declaration in writing of himself and his surety filed with the commission that the provisions of the law shall apply thereto. Unless the effective date of such coverage is otherwise fixed in such declaration, coverage shall be deemed effective as of the date of filing such election, if the employer also files simultaneously or has on file approved security under section 72-301; otherwise, such coverage shall be deemed effective upon the filing of approved security.

72-214. REVOCATION OF ELECTION. — An election of coverage may be revoked by a declaration in writing of the employer and his surety filed with the commission. The effective date of such revocation shall be ten (10) days from the date of its filing, unless such declaration fixes a more remote date.

The cancellation of coverage by a surety shall revoke an election of coverage theretofore made, unless before the effective date of such cancellation the employer files substitute security, supplemented by the new surety's consent to such election.

72-215. INMATES OF INSTITUTIONS. — (1) For purposes of this section, the term "inmate" includes any person confined in a public institution against his will, or voluntarily admitted, or because such person is mentally deficient or insane and so confined, although lacking the capacity to exercise will, whether the institution is a penal institution or not; it also applies to inmates of state mental institutions, homes for the feeble-minded, reformatories, state prisons, county and local jails, and the like. The term also applies to hospitals for the indigent or infirm within the purview of chapter 35, title 31, Idaho Code, and to rest, convalescent or shelter homes within the purview of chapter 33, title 39, Idaho Code, and amendments.

(2) The term "inmate" does not apply to students in schools for the deaf and blind or other similar institutions.

(3) If an inmate, in the performance of his work in connection with the maintenance of the institution, or with any industry maintained therein, or with any public works activity outside the institution, contracts an occupational disease or receives an injury arising out of and in the course of employment, the employer shall provide such inmate reasonable medical services.

(4) Such inmate shall not become entitled to income benefits for total disability of a temporary nature, or to income benefits for partial disability.
(5) If the injury or occupational disease causes the inmate to suffer total permanent disability, or scheduled or unscheduled permanent disability or total or partial disability, he shall, upon being released from such institution either upon parole or upon final discharge, become entitled to income benefits for total permanent disability, or scheduled or unscheduled permanent disability within the purview of sections 72-407, 72-428 or 72-429, as the case may be, or total or partial disability income benefits within the purview of section 72-408, if the total or partial disability continues after the date of his release from the institution; in case of his death, his dependents or his estate shall inherit the benefits payable for the scheduled or unscheduled disability provided by section 72-431. If the inmate's death results from such injury or occupational disease, his dependents shall become entitled to death income benefits within the purview of section 72-413, provided, however, that such benefits shall be calculated on the applicable percentage of the inmate's actual weekly wages as "wages" are defined in section 72-102(26) and (27).

(6) While so confined, the inmate himself, or through a guardian or next friend, or if confined in a public institution, upon release either by parole or by final discharge, may be awarded and paid such income benefits. The time limit for filing a claim under this section shall date from the time of parole or final discharge or death, as the case may be, or from the time specified or referred to in section 72-701, whichever is later.

(7) If any person who has been awarded scheduled or unscheduled income benefits under the provisions of this section shall be recommitted to a public institution covered by this section, payment of such income benefits shall immediately cease, but may subsequently be resumed upon subsequent parole or discharge.

72-216. CONTRACTORS. — (1) Liability of employer to employees of contractors and subcontractors. An employer subject to the provisions of this law shall be liable for compensation to an employee of a contractor or subcontractor under him who has not complied with the provisions of section 72-301 in any case where such employer would have been liable for compensation if such employee had been working directly for such employer.

(2) Liability of contractors and subcontractors. The contractor or subcontractor shall also be liable for such compensation, but the employee shall not recover compensation for the same injury from more than one (1) party.
(3) **Subrogation.**

(a) The employer who shall become liable for and pay such compensation may recover the same from the contractor or subcontractor for whom the employee was working at the time of the accident causing the injury or manifestation of the occupational disease.

(b) The contractor who shall become liable for and pay such compensation may recover the same from the subcontractor for whom the employee was working at the time of the accident causing the injury or manifestation of the occupational disease.

72-217. **EXTRATERRITORIAL COVERAGE.** — If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or, in the event of his death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:

(1) His employment is principally localized in this state; or

(2) He is working under a contract of hire made in this state in employment not principally localized in any state; or

(3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or

(4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

72-218. **AWARD SUBJECT TO CREDIT FOR BENEFITS FURNISHED OR PAID UNDER LAWS OF OTHER JURISDICTIONS.** — The payment or award of benefits under the workmen's compensation law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such injury, occupational disease or death to the benefits of this law shall not be a bar to a claim for benefits under this law, provided that claim under this law is filed within two (2) years after the accident causing such injury, or manifestation of such disease, or death. If compensation is paid or awarded under this law:

(1) The medical and related benefits furnished or paid by the employer under such other workmen's compensation law on account of such injury, occupational disease, or death shall be credited against the medical and
related benefits to which the employee would have been entitled under this law, had claim been made solely under this law;

(2) The total amount of all income benefits paid or awarded the employee under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employee had claim been made solely under this law;

(3) The total amount of death benefits paid or awarded under such other workmen's compensation law shall be credited against the total amount of death benefits payable under this law.

72-219. INJURIES IN TRANSITORY EMPLOYMENT IN IDAHO. —
(1) If an employee is entitled to the benefits of this law by reason of an injury sustained or occupational disease contracted in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this law, the employer or his surety may file with the commission a certificate, issued by the board, commission, officer or agency of such other state having jurisdiction over workmen's compensation claims, certifying that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury or disease such employee is entitled to the benefits provided under such law; and shall also file with the commission an irrevocable power of attorney, in form approved by the commission, designating a person or corporation domiciled in this state as his or its attorney-in-fact for acceptance of process in any proceeding brought by such employee or his dependents to enforce his or their rights under this law;

(2) If such employer is a qualified self-insurer under the workmen's compensation law of such other state, such employer shall, upon submission of evidence satisfactory to the commission of his ability to meet his liability to such employee under this law, be deemed to be a qualified self-insurer under this law;

(3) If such employer's liability under the workmen's compensation law of such other state is insured, such employer's surety, as to such employee or his dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this law, provided, however, that unless the contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this law, its liability for income benefits or for medical and related benefits shall not exceed the amounts of such benefits for which such insurer would have been liable under the
workmen's compensation law of such other state;

(4) If the total amount for which such employer's insurer is liable under the subdivisions (2) and (3) is less than the total of the compensation benefits to which such employee is entitled under this law, the commission, if it deems necessary, may require the employer to file security, satisfactory to the commission, to secure the payment of benefits due such employee or his dependents under this law; and

(5) Upon compliance with the preceding requirements of this section such employer, as to such employee and his dependents only, shall be deemed to have secured the payment of compensation under this law.

72-220. LOCALE OF EMPLOYMENT. — (1) A person's employment is principally localized in this or another state when:

(a) His employer has a place of business in this or such other state and he regularly works at or from such place of business; or

(b) He is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

(2) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this law.

72-221. COVERAGE FOR INJURIES OR OCCUPATIONAL DISEASES OUTSIDE STATE PRESUMED. — An employer who hires workmen within this state to work outside the state may agree with such workmen that the remedies under this act shall be exclusive as to injuries received and occupational diseases contracted outside this state arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement.

72-222. RECIPROCAL RECOGNITION OF EXTRATERRITORIAL COVERAGE WITH OTHER JURISDICTIONS. — For the purpose of effecting mutually satisfactory reciprocal arrangements with other states respecting extraterritorial jurisdictions, the commission is empowered to promulgate special or general regulations not inconsistent with the provisions of this law and, with the approval of the governor, to enter into reciprocal agreements with appropriate boards, commissions, officers or agencies of other states having jurisdiction of workmen's compensation claims.

72-223. THIRD PARTY LIABILITY. — (1) The right to compensation under this law shall not be affected by the fact that the injury,
occupational disease or death is caused under circumstances creating in some person other than the employer a legal liability to pay damages therefor, such person so liable being referred to as the third party. Such third party shall include those employers described in section 72-216, having under them contractors or subcontractors who have in fact complied with the provisions of section 72-301.

(2) Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly, in the employee’s name, or, if the employee refuses to participate in such action, by the employer in the employee’s name.

(3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer’s compensation liability.

(4) On any recovery by the employee against a third party, the employer shall pay or have deducted from his subrogated portion thereof, a proportionate share of the costs and attorney’s fees incurred by the employee in obtaining such recovery.

(5) If death results from the injury or occupational disease and if the employee leaves no dependents entitled to benefits under this law, the surety shall have a right of action against the third party for recovery of income benefits, reasonable expenses of medical and related services and burial expense actually paid by the surety and for recovery of amounts paid into the industrial special indemnity fund pursuant to section 72-420, and such right of action shall be in addition to any cause of action of the heirs or personal representatives of the deceased.

72-224. NONRESIDENT ALIEN DEPENDENTS. — Except as otherwise provided by treaty, whenever under the provisions of this law compensation is payable to a dependent who is an alien not residing in the United States, the employer shall pay fifty percent (50%) of the compensation to such dependent and the remaining fifty percent (50%) into the state treasury to be deposited in the industrial administration fund. But if a nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable a degree as herein extended to nonresident aliens, then all of the compensation which would otherwise be payable to such dependent shall be paid into the industrial administration fund.
72-225. MINOR EMPLOYEE. — A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this law, and no other person shall have any cause of action or right to compensation for an injury or occupational disease to such minor employee except as expressly provided in this law; but, in the event of a lump sum payment becoming due under this law to such minor employee, the management of the sum shall be within the jurisdiction of the courts, the same as other property of minors.

72-226. INSANE PERSON'S COMPENSATION PAYABLE TO GUARDIAN. — The compensation of a person who is insane shall be paid to his or her guardian.

72-227. DOUBTFUL RIGHTS SUBJECT TO COMMISSION'S DETERMINATION. — In case the employer is in doubt as to the respective rights of rival claimants he may apply to the commission to decide between them.

72-228. PRESUMPTION. — In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, and where there is unrebutted prima facie evidence that indicates that the injury arose in the course of employment, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury arose out of the employment, that sufficient notice of the accident causing the injury has been given, and that the injury or death was not occasioned by the employee's intoxication or by his willful intention to injure himself or to injure another.

CHAPTER 3
SECURITY FOR COMPENSATION

72-301. SECURITY FOR PAYMENT OF COMPENSATION. — Every employer shall secure the payment of compensation under this law:

(1) By insuring and keeping insured the payment of compensation with any surety authorized by the commissioner of insurance to insure or guarantee the payment of workmen's compensation liability of employers in this state, provided, that every public employer shall insure its liability for payment of compensation with the state insurance fund unless such fund shall refuse to accept the risk when the application for insurance is made.

(2) By depositing and maintaining with the commission security satisfactory to the commission securing the payment by said employer of compensation according to the terms of this law.

Surety bond or guaranty contract. Such security may consist of a
surety bond or guaranty contract with any company authorized to do surety or guaranty business in Idaho and having a sufficient deposit with the state treasurer upon which execution may lawfully be issued against said company on behalf of any workman secured under said bonds or contracts.

Qualifications of surety company. No company shall be permitted to write surety bonds or guaranty contracts covering the liability hereunder of employers of this state unless it shall have been authorized to do business under the laws of this state and until it shall have received the approval of the commission.

Qualifications of liability company. Provided, that any company approved by the commission and duly authorized and licensed to write liability insurance in this state and having on deposit with the state treasurer or the department of insurance securities in the amount of one hundred thousand dollars ($100,000) of the class or classes eligible for investment in or representing the minimum capital required of a domestic liability insurance company of the state and which company deposits and maintains with the state treasurer of the state the securities specified in this section in an amount equal to the total amounts of all of the outstanding and unpaid awards against such company shall be permitted and authorized to write the surety bonds or guaranty contracts specified in this section covering the liability of the employers of the state and securing payment by said employers of the compensation required by this law; but this proviso shall not be construed to apply to any company making insurance as defined in section 41-507 (1), (3) and (4), Idaho Code.

Qualifications subject to regulation. To the end that the workmen secured under this act by any such company shall be adequately protected the commission is hereby authorized to make and change such reasonable regulations as it may deem necessary with reference to the capital stock, surplus and reserves of such companies.

Deposit with state treasurer. To require such companies, self-insuring employers and the state insurance fund to deposit and maintain with the treasurer of the state money or bonds of the United States or of this state, or interest paying bonds when they are at or above par, or any other state of the United States or the District of Columbia, or the bonds of any county or municipal corporation of this or any other state of the United States or the District of Columbia in an amount equal to the total amounts of all outstanding and unpaid compensation awards against such employer or such company or the state insurance fund or against the employers insured by
such company in the state insurance fund.

Surety bond in lieu of deposit with state treasurer. In lieu of such money or bonds the commission may require such company, self-insuring employer or the state insurance fund to file or maintain with the treasurer of the state a surety bond of some company or companies authorized to do business in this state for and in the amounts equaling the total unpaid compensation awards against such company, self-insurer or state insurance fund.

Withdrawal of commission approval. The approval by the commission of any such company may be withdrawn if it shall appear to the commission that workmen secured therein under this act are not fully protected.

72-302. REGULATION OF DEPOSIT WITH STATE TREASURER. ...

The securities so deposited with the state treasurer shall be an exclusive trust for the benefit of the employees of the employers whose compensation liability is so secured, to remain with the treasurer in trust to answer any default of any employer, self-employer or surety upon any such obligation established by final judgment upon which execution may lawfully be issued against the employer or surety; the surety, however, at all times shall have the right to collect the interest, dividends and profits upon the securities, and from time to time to withdraw the securities or a portion thereof, substituting therefor others of equally good character and value, to the satisfaction of the commission, and the securities shall not be sold under any process against the surety until after thirty (30) days' notice to the surety, supplying the date, place and manner of sale, and the process under which and the purpose for which the sale is to be made, accompanied by a copy of the process. The surety shall not be permitted to withdraw from the state treasurer the deposits of money or bonds or permit the surety bonds to lapse for a period of one (1) year after discontinuing business within this state, or while any suit is pending or while any judgment against the surety in this state, or award against an employer whose compensation liability is secured by the surety, shall remain unpaid.

72-303. QUALIFICATION SUBJECT TO REGULATION. — To the end that payment of compensation secured by this law shall be adequately protected, the commissioner of insurance is hereby authorized and empowered to make and change from time to time such reasonable regulations as he may deem necessary with reference to required capital stock, surplus and reserves of sureties securing payment of compensation under this law.
72-304. PROMPT COMPENSATION PAYMENTS REQUIRED
RULES AND REGULATIONS. — The commission is authorized to make
and change from time to time such rules and regulations as it shall deem
necessary to secure the prompt payment of compensation, and after
affording the surety opportunity to be heard, may withdraw its approval of
any employer or surety who unnecessarily delays payment of compensation,
and the commissioner of insurance upon notification accordingly shall
withdraw his authorization of a surety to insure or guarantee the payment of
workmen's compensation liability of employers in this state.

72-305. CLAIMS SERVICES AND MEDICAL SUPERVISION. — Each
surety shall provide prompt claims services through its own adjusting offices
or officers located within the state, or by independent, licensed, resident
adjusters.

The surety shall provide medical supervision of cases from its insureds
through medical consultants located within the state or near enough to
provide prompt and continuous service.

72-306. RECITALS IN INSURANCE CONTRACTS. — Every policy of
insurance and every guaranty contract or surety bond covering the liability
of the employer for compensation shall cover the entire compensation
liability of the employer to his employees, and shall contain a provision
setting forth the right of an employee to enforce in his own name, either by
at any time filing a separate claim or by at any time making the surety a
party to the original claim, the liability of the surety in whole or in part for
the payment of such compensation, provided, that payment in whole or in
part of such compensation by either the employer or the surety shall, to the
extent thereof, be a bar to the recovery against the other of the amount so
paid.

72-307. KNOWLEDGE OF EMPLOYER TO AFFECT SURETY. —
Every such policy, contract or bond shall contain a provision that, as
between the employee and the surety, the notice to or knowledge of the
occurrence of accident causing an injury or manifestation of an occupational
disease on the part of the employer shall be deemed notice or knowledge, as
the case may be, on the part of the surety, that the jurisdiction of the
employer shall, for the purpose of this law, be the jurisdiction of the surety,
and that the surety shall in all things be bound by and subject to the orders,
findings, decisions, or awards of the commission rendered against the
employer for the payment of compensation.

72-308. INSOLVENCY OF EMPLOYER NOT TO RELEASE
SURETY. — Every such policy, contract or bond shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the surety from the payment of compensation for injuries received or occupational diseases contracted or death sustained by an employee during the life of such policy or contract.

72-309. INSURANCE CONTRACT DEEMED REFORMED. — Every such policy, contract or bond shall be deemed to be made subject to the provisions of this law and, if inconsistent with this law, shall be deemed to be reformed to conform to the provisions of this law.

72-310. MISREPRESENTATION NOT TO AFFECT EMPLOYEE'S RIGHTS. — (1) No statement in an application for such a policy, contract or bond shall void the policy, contract or bond as between the surety and employer unless such statement shall be false and would materially have affected the acceptance of the risk if known by the surety. In no case shall the holding of the policy, contract or bond void between the surety and employer affect the surety's obligation to the employer's employees or their dependents to pay compensation and to discharge other obligations under this law. In such case, the surety shall have a right of action against the employer for any amounts for which the surety is liable under such policy, contract or bond.

(2) As between any such employee or his dependents and the surety no question as to breach of warranty or misrepresentation by the insured shall be raised by the surety in any proceeding or any appeal therefrom.

72-311. NOTICE OF SECURITY. — The employer shall forthwith file with the commission in form prescribed by it, a notice of his security.

72-312. POSTING OF NOTICE REGARDING INSURANCE — PENALTY. — Every employer who has complied with section 72-301 shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with the law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of this law. Such notice shall contain the name and address of the surety, if any, with which the employer has secured payment of compensation. An employer who fails to post and keep such notice conspicuously displayed shall be guilty of a misdemeanor.

72-313. PAYMENT PENDING DETERMINATION OF POLICY COVERAGE. — Whenever any claim is presented and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an
employer and a surety or between two (2) or more employers or sureties, the
commission shall order payment of compensation to be made immediately
by one (1) or more of such employers or sureties. The commission may
order any such employer or surety to deposit the amount of the award or to
give such security therefor as may be deemed satisfactory. When the issue is
finally resolved, an employer or surety held not liable shall be reimbursed for
any such payments by the employer or surety held liable and any deposit or
security so made shall be returned.

72-314. PAYMENT OF LIABILITY OF PUBLIC EMPLOYER. — Any
sums necessary to be paid under the provisions of this law by any public or
quasi-public employer, which exercises taxing power, for compensation
premiums or compensation shall be considered to be ordinary and necessary
expenses of such employer, and its governing body shall make appropriation
of and pay such sums whenever necessary, notwithstanding that it may have
failed to anticipate such ordinary and necessary expense in any budget,
estimate of expense, appropriation, ordinance, or otherwise.

72-315. ERRONEOUS PAYMENT IN GOOD FAITH. — Payment of
death benefits by an employer in good faith to a dependent subsequent in
right to another or other dependents shall protect and discharge the
employer unless and until such dependent or dependents prior in right shall
have given him notice of his or their claim.

72-316. VOLUNTARY PAYMENTS OF INCOME BENEFITS. — Any
payments made by the employer or his insurer to a workman injured or
afflicted with an occupational disease, during the period of disability, or to
his dependents, which under the provisions of this law, were not due and
payable when made, may, subject to the approval of the commission, be
deducted from the amount yet owing and to be paid as income benefits;
provided, that in case of disability such deduction shall be made by
shortening the period during which income benefits must be paid, and not
by reducing the amount of the weekly payments.

72-317. PERIODICAL PAYMENTS. — The commission, upon the
application of either party, may in its discretion, having regard to the welfare
of the employee and the convenience of the employer, authorize income
benefits to be paid biweekly or monthly instead of weekly.

72-318. INVALID AGREEMENTS — PENALTY. — (1) No agreement
by an employee to pay any portion of the premiums paid by his employer
for workmen's compensation, or to contribute to the cost or other security
maintained for or carried for the purpose of securing the payment of
workmen's compensation, or to contribute to a benefit fund or department maintained by the employer, or any contract, rule, regulation or device whatever designed to relieve the employer in whole or in part from any liability created by this law, shall be valid. Any employer who makes a deduction for such purpose from the remuneration of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

(2) No agreement by an employee to waive his rights to compensation under this act shall be valid.

72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION. - (1) Any employer required to secure the payment of compensation under this law who fails to secure the payment thereof shall be guilty of a misdemeanor. In any case where the employer is a corporation, any officer or employee of the corporation who had authority to secure payment of compensation on behalf of the corporation and failed to do so shall individually be guilty of a misdemeanor.

(2) Such officer or employee shall be personally liable jointly and severally with such corporation for any compensation which may accrue under this law in respect to any injury or occupational disease suffered by any employee of such corporation while it shall so fail to secure the payment of compensation.

(3) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrete's or destroys any property or records belonging to such employer, after one of his employees has been afflicted by an injury or occupational disease, with intent to avoid the payment of compensation to such employee or his dependents, shall be guilty of a misdemeanor. In any case where such employer is a corporation, any officer or employee thereof, if knowingly participating or acquiescing in any such act, shall also be individually guilty of a misdemeanor.

(4) Any employer required to secure the payment of compensation under this law, who willfully failed to do so, shall be liable to a penalty for each day during which such failure continues of two dollars ($2) for each employee, and in cases where the employer is a corporation and is unable to pay the fine, any officer or employee of the corporation who had authority to secure payment of compensation on behalf of the corporation and willfully failed to do so, shall be liable for a like penalty, to be recovered for the time during which such failure continued, but for not more than three (3) consecutive years, in an action brought by the commission in the name of the state of Idaho; any amount so collected shall be paid into the
industrial administration fund; for this purpose the district court of any county in which the employer carries on any part of his trade or occupation shall have jurisdiction.

72-320. COMPENSATION PREFERRED AS WAGES. — All rights of compensation granted by this law shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages of labor.

72-321. STATUTORY AGENT OF EMPLOYER WHO HAS NO BUSINESS LOCALE. — If an employer maintains no place of business in this state, he shall be deemed to have appointed the secretary of state as his agent for the purpose of acceptance of service of process, or of any order, directive, decision or award of the commission or of notice of any proceeding commenced by any party pursuant to this law.

72-322. ASSIGNED RISK. — The commissioner of insurance, after consultation with sureties authorized to issue workmen's compensation policies and guaranty contracts in this state, may put into effect a reasonable system for the equitable apportionment among such sureties of applicants for such policies or guaranty contracts who are in good faith entitled to but are unable to procure the same through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on workmen's compensation premiums, shall, following his application to the assigned risk system and tender of required premium, be covered by workmen's compensation insurance or his coverage guaranteed. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no surety shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such surety during the preceding year bears to the total compensation premiums written in the state by all such sureties during the preceding calendar year.

72-323. CREATION OF INDUSTRIAL SPECIAL INDEMNITY FUND. — A fund is hereby created to be known as the industrial special indemnity fund, which shall consist of payments made to it as in sections 72-327 and 72-420, and as may hereafter be provided.

72-324. INDUSTRIAL COMMISSION ADMINISTRATOR OF FUND. — The industrial special indemnity fund shall be administered by the commission without liability on the part of the state or the commission beyond the amount of such fund.
72-325. STATE TREASURER CUSTODIAN OF FUND — DUTIES. —
The state treasurer shall be custodian of the industrial special indemnity fund. He shall give a separate and additional bond in an amount and with sureties approved by the commissioner of insurance, conditioned for the faithful performance of his duty as custodian of said fund.

72-326. DEPOSIT AND INVESTMENT OF FUND — INTEREST. —
The state treasurer shall deposit or, on order of the commission, invest any portion of the industrial administration fund not needed for immediate or currently anticipated use, in the manner and subject to all the provisions of law respecting the depositing and investing of state funds by him. Interest earned by such portion of the fund so invested shall be collected by the state treasurer and placed to the credit of the fund.

72-327. SOURCE OF FUND — EXCISE. — When an award of scheduled or unscheduled income benefits has been made under sections 72-428 or 72-429, except as otherwise provided in section 72-328, in addition to the payments to be made to the employee under an award, the employer shall forthwith pay to the state treasurer, to be deposited into the industrial special indemnity fund, a lump sum, without discount not to exceed four percent (4%) of the aggregate scheduled or unscheduled income benefits so awarded.

72-328. SUSPENSION OF EXCISE — DISCRETION OF COMMISSION. — Whenever the invested surplus or reserve in the industrial special indemnity fund shall exceed five hundred thousand dollars ($500,000) and the income or anticipated income therefrom together with the cash balance in the fund, in the opinion of the commission, shall be sufficient to meet the then currently accruing awards entered against the fund, the commission may reduce or suspend the levy of the excise made pursuant to section 72-327, until further order of the commission.

Any such order of suspension shall be made by the commission on or before May 1 preceding the beginning of the fiscal year for which the suspension is effective. A certified copy of such order of suspension shall be filed in the office of the state treasurer and the office of state auditor.

72-329. DISBURSEMENTS. — All disbursements from the industrial special indemnity fund shall be paid by the treasurer upon orders of the commission. Such orders shall be issued under the seal of the commission signed by its chairman and attested by its secretary. Disbursements to beneficiaries shall be made monthly.

72-330. LEGAL REPRESENTATION OF FUND. — The attorney
general shall appoint a member of his staff, if requested by the commission, to represent the industrial special indemnity fund in any proceeding brought to enforce a claim against the fund.

72-331. PAYMENT OF ADMINISTRATIVE EXPENSES. — The commission shall have the authority to defray necessary expenses of administration involving the industrial special indemnity fund, including secretarial help, equipment and supplies, medical and other experts, witnesses, legal counsel, and similar aid and services.

72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL SPECIAL INDEMNITY FUND. — (1) If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his compensation benefits out of the special industrial indemnity fund.

(2) As used in this law, "permanent physical impairment" means any permanent condition, whether congenital or due to the injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed.

72-333. PERPETUAL APPROPRIATION. — All moneys which may come into the industrial special indemnity fund are hereby perpetually appropriated to the commission to be expended by it for the purposes stated in sections 72-331 and 72-332.

CHAPTER 4
BENEFITS

72-401. DEPENDENCY — WHEN DETERMINED. — Dependency shall initially be determined as of the time of the accident causing the injury or of manifestation of an occupational disease for purposes of income benefits therefor, and as of the time of death for purposes of income benefits for death.

72-402. WAITING PERIOD. — (1) An injured employee shall not be
allowed income benefits for the first five (5) days of disability for work; provided, if the injury results in disability for work exceeding two (2) weeks, income benefits shall be allowed from the date of disability and be paid no later than four (4) weeks from date of disability. Provided, further, that the waiting period shall not apply if the injured employee is hospitalized as an in-patient or if there is an actual loss of a member.

(2) The day on which the injury occurred shall be included in computing the waiting period unless the employee has been paid wages for that day.

72-403. PENALTY FOR MALINGERING — DENIAL OF COMPENSATION. — If a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by or secured for him, he shall not be entitled to any compensation.

72-404. LUMP SUM PAYMENTS. — Whenever the commission determines that it is for the best interest of all parties, the liability of the employer for income benefits may, on application to the commission by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be determined, with the approval of the commission.

72-405. TRUSTEE IN CASE OF LUMP SUM PAYMENT. — Whenever for any reason the commission deems it expedient, any lump sum to be paid as provided in section 72-404, shall be paid to some suitable person or corporation appointed as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by the commission. The receipt of such trustee for the amount so paid shall discharge the employer or anyone else who is liable therefor.

72-406. DEDUCTIONS FOR PRE-EXISTING INJURIES AND INFIRMITIES. — (1) In cases of permanent disability less than total, if the degree or duration of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a pre-existing physical impairment, the employer shall be liable only for the additional disability from the industrial injury or occupational disease.

(2) Any income benefits previously paid an injured workman for permanent disability to any member or part of his body shall be deducted from the amount of income benefits provided for the permanent disability to the same member or part of his body caused by a change in his physical condition or by a subsequent injury or occupational disease.

72-407. CERTAIN INJURIES DEEMED TOTAL AND PERMANENT.
In case of the following injuries in the absence of conclusive proof to the contrary the disability caused thereby shall be deemed total and permanent.

1. Total and permanent loss of sight in both eyes.
2. Loss of both feet at or above the ankle.
3. Loss of both hands at or above the wrist.
4. Loss of one hand and one foot.
5. An injury to the spine resulting in permanent and complete paralysis of both legs or arms or of one leg and one arm.
6. An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

72-408. INCOME BENEFITS FOR TOTAL AND PARTIAL DISABILITY. Income benefits for total and partial disability during the period of recovery shall be paid to the disabled employee subject to deduction on account of waiting period and subject to the maximum and minimum limits set forth in section 72-409, as follows:

1. Total disability for employee without dependent children. To an employee without dependent children, but not to exceed a period of fifty-two (52) weeks, an amount equal to sixty percent (60%) of his average weekly wage and thereafter an amount equal to sixty percent (60%) of the currently applicable average weekly state wage.

2. Total disability for employee with dependent children. To an employee with dependent children, in addition to the amounts fixed in subsection (1) herein, an amount equal to seven percent (7%) of the currently applicable average weekly state wage for each dependent child to and including a maximum of five (5). In case of an employee who is receiving a minimum weekly benefit, the allowance for dependent children shall be added to such minimum benefit subject to the overall maximum of ninety percent (90%) of average weekly wage as provided in section 72-409.

3. Partial disability. For partial disability during the period of recovery an amount equal to sixty percent (60%) of his decrease in wage-earning capacity.

72-409. MAXIMUM AND MINIMUM INCOME BENEFITS FOR TOTAL DISABILITY. (1) The weekly income benefits provided for in section 72-408(1) shall be subject to a maximum of ninety percent (90%) and a minimum of forty-five percent (45%) of the currently applicable average weekly state wage, provided, however, that in no case shall the income benefits provided for in either sections 72-408(1) or 72-408(2) exceed ninety percent (90%) of the employee's average weekly wage except
as benefits may be increased by reason of increases in the average weekly state wage as computed in subsection (2) hereof, nor shall income benefits subsequent to the first fifty-two (52) weeks of total disability exceed income benefits paid during the first fifty-two (52) weeks of total disability except as the same may be increased by reason of increases in the average weekly state wage.

(2) For the purpose of this law the average weekly wage in the state shall be determined by the commission as follows: on or before June 1 of each year, the total wages reported on contribution reports to the department of employment for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by twelve (12). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly state wage thus determined rounded to the nearest dollar. The average weekly state wage as so determined shall be applicable for the calendar year commencing January 1 following the June 1 determination.

72-410. DEPENDENTS. — The following persons, and they only, shall be deemed dependents and entitled to income benefits under the provisions of this act:

(1) A child if under eighteen (18) years of age, or incapable of self-support and unmarried, whether actually dependent upon the deceased or not.

(2) The widow only if living with the deceased or living apart from him for justifiable cause, or actually dependent, wholly or partially, upon him.

(3) The widower only if incapable of self-support and actually dependent, wholly or partially, upon the deceased at the time of her injury.

(4) A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.

(5) A grandchild, brother or sister only if under eighteen (18) years of age, or incapable of self-support, and actually dependent wholly upon the deceased.

72-411. TIME OF DEPENDENCY. — The relation of dependency must exist at the time of the accident causing the injury or manifestation of occupational disease.

72-412. PERIODS OF INCOME BENEFITS FOR DEATH. — The income benefits for death herein provided for shall be payable during the following periods:

(1) To a widow, until death or remarriage, but in no case to exceed five hundred (500) weeks.
(2) To a widower, during disability or until remarriage, but in no case to exceed five hundred (500) weeks.

(3) To or for a child, until eighteen (18) years of age, but in the case of a child incapable of self-support and unmarried, as long as so incapable, but in no case to exceed in the aggregate a total of five hundred (500) weeks. Provided, income benefits payable to or for a child shall cease when such child marries.

(4) To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed five hundred (500) weeks.

(5) To or for a grandchild, brother or sister during dependency as hereinbefore defined, but in no case to exceed five hundred (500) weeks.

(6) In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total periods of compensation respectively stated in this section.

72-413. INCOME BENEFITS FOR DEATH. — If death results from the injury or occupational disease within four (4) years, the employer shall pay to or for the benefit of the following particular classes of dependents' weekly income benefits equal to the following percentages of the average weekly state wage as defined in section 72-409.

(1) To a dependent widow or widower, if there be no dependent children, forty-five percent (45%).

(2) To a dependent widow or widower, if there be dependent children, an additional five percent (5%) of the average weekly state wage for each dependent child to and including a total of three (3). Such compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children and the commission may from time to time apportion such compensation between them in such a way as it deems best. If a child has a guardian older than the surviving widow or widower, the compensation payable on account of the child shall be made to the guardian.

(3) If there be no dependent widow or widower, but a dependent child or children, thirty percent (30%) of the average weekly state wage for one (1) child and ten percent (10%) for each additional child to and including a total of three (3), to a maximum not to exceed sixty percent (60%) of the average weekly state wage, to be divided equally among such children.

(4) To the parents, if one (1) be wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five percent (25%) of the average weekly
state wage; if both are wholly dependent, twenty percent (20%) of the average weekly state wage to each; if one (1) be or both are partly dependent, a proportionate amount in the discretion of the commission.

The above percentages shall be paid if there be no dependent widow, widower or child. If there be a widow, widower or child, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower and children, will not exceed a total of sixty percent (60%) of the average state weekly wage.

(5) To the brothers, sisters, grandparents and grandchildren, if one (1) be wholly dependent upon the deceased employee at the time of his death, twenty percent (20%) of the average state weekly wage to such dependents; if more than one (1) be wholly dependent, thirty percent (30%) of the average state weekly wage, divided among such dependents, share and share alike. If there be no one (1) of them wholly dependent, but one (1) or more partially dependent, ten percent (10%) of the average state weekly wage divided among such dependents, share and share alike.

The above percentages shall be paid if there be no dependent widow, widower, child or parent. If there be a dependent widow, widower, child or parent, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, children and dependent parents, will not exceed a total of sixty percent (60%) of the average weekly state wage.

72-414. APPORTIONMENT BENEFITS BETWEEN CLASSES. In case there are two (2) or more classes of persons entitled to compensation under section 72-413, and the apportionment of such compensation as above provided, would result in injustice, the commission may, in its discretion, modify the apportionment to meet the requirements of the case.

72-415. CHANGE IN DEPENDENTS. Upon the cessation of the income benefits for death to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

72-416. MAXIMUM INCOME BENEFITS FOR DEATH. For purposes of income benefits for death, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in section 72-409.

(2) In no case shall the aggregate weekly income benefits payable to all
beneficiaries under this section exceed the maximum income benefits that
were or would have been payable for total disability to the deceased.

72-417. MAXIMUM TOTAL PAYMENT. — The maximum weekly
income benefits payable for all beneficiaries in case of death shall not exceed
sixty percent (60%) of the average weekly wage of the deceased as calculated
under section 72-419, subject to the maximum limits in section 72-416. The
classes of beneficiaries specified in paragraphs (1), (2) and (3) of section
72-413, shall have priority over all other beneficiaries in the apportionment
of income benefits. If the provisions of said paragraphs should prevent
payment to other beneficiaries of the income benefits to the full extent
otherwise provided in section 72-413, the gross remaining amount of income
benefits payable to such other beneficiaries shall be apportioned by class,
proportionate to the interest of each class in the remaining amount. The
dependents specified in paragraph (4) of section 72-410, shall be considered
to be in one class and those specified in paragraph (5) of said section, in
another class.

72-418. COMPUTATION OF WEEKS AND DAYS. — In computing
periods of disability and of compensation a week shall be computed as seven
(7) days and a day as one-seventh (1/7) of a week, without regard to
Sundays, holidays and working days.

72-419. DETERMINATION OF AVERAGE WEEKLY WAGE. —
Except as otherwise provided in this law, the average weekly wage of the
employee at the time of the accident causing the injury or of manifestation
of the occupational disease shall be taken as the basis upon which to
compute compensation and shall be determined as follows:

(1) If at such time the wages are fixed by the week, the amount so
fixed shall be the average weekly wage.

(2) If at such time the wages are fixed by the month, the average
weekly wage shall be the monthly wage so fixed multiplied by twelve (12)
and divided by fifty-two (52).

(3) If at such time the wages are fixed by the year, the average weekly
wage shall be the yearly wage so fixed divided by fifty-two (52).

(4) (a) If at such time the wages are fixed by the day, hour or by the
output of the employee, the average weekly wage shall be the wage
most favorable to the employee computed by dividing by thirteen (13)
his wages (not including overtime or premium pay) earned in the
employ of the employer in the first, second, third or fourth period of
thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks
immediately preceding the time of accident or manifestation of the disease.

(b) If the employee has been in the employ of the employer less than twelve (12) calendar weeks immediately preceding the accident or manifestation of the disease, his average weekly wage shall be computed under the foregoing paragraph, taking the wages (not including overtime or premium pay) for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding such time and had worked, when work was available to other employees in a similar occupation.

(5) If at such time the hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(6) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the time of the accident or manifestation of the disease.

(7) In the case of volunteer firemen, police and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(8) If the employee was a minor, apprentice or trainee at the time of the accident or manifestation of the disease, and it is established that under normal conditions his wages should be expected to increase during the period of disability that fact may be considered in computing his average weekly wage.

(9) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of such employment prior to the injury, the employee’s wages from all such employers shall be considered as if earned from the employer liable for compensation.

(10) The wage basis for computing compensation shall be not less than thirty-six (36) times the hourly rate of pay or not less than four and one-half (4½) times the daily rate, whichever is more applicable under the contract of hiring.

(11) When circumstances are such that the actual rate of pay cannot be readily ascertained, the wage shall be deemed to be the contractual,
customary or usual wage in the particular employment, industry or community for the same or similar service.

72-420. COMPENSATION TO STATE WHEN DEPENDENCY NOT CLAIMED OR PROVED. — In case no claim for compensation is made by a dependent of a deceased employee and filed with the commission within one (1) year after the death, or in case a claim is made and filed within such year and no dependency proven, the employer shall pay into the state treasury the sum of one thousand dollars ($1,000) to be deposited in the industrial administration fund and the additional sum of one thousand dollars ($1,000), to be deposited in the industrial special indemnity fund.

72-421. REFUND OF STATE'S COMPENSATION TO MINOR OR INCOMPETENT DEPENDENT. — If, after an employer has paid the sum of two thousand dollars ($2,000) into the state treasury as required by section 72-420, a claim is made and dependency proven by a person who during the period of one (1) year after the death in which a claim may be made was either a minor or mentally incompetent and who during such year had no person or representative legally qualified under the provisions of this act to make a claim in his behalf, such sum of two thousand dollars ($2,000) shall be repaid to the employer on the order of the commission; provided, that nothing in this act shall be construed as extending or increasing the time during which a claim for compensation by a dependent may be made.

72-422. PERMANENT IMPAIRMENT. — "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of evaluation. Permanent impairment is a basic consideration in the evaluation of permanent disability, and is a contributing factor to, but not necessarily an indication of, the entire extent of permanent disability.

72-423. PERMANENT DISABILITY. — "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected.

72-424. PERMANENT IMPAIRMENT EVALUATION. — "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members.
72-425. PERMANENT DISABILITY EVALUATION. — “Evaluation (rating) of permanent disability” is an appraisal of the injured employee’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by nonmedical factors, such as age, sex, education, economic and social environment.

72-426. THE WHOLE MAN — A PERIOD OF FIVE HUNDRED WEEKS. — The “whole man” for purposes of computing disability evaluation of scheduled or unscheduled permanent injury (bodily loss or losses or loss of use) for conversion to scheduled income benefits, shall be a deemed period of disability of five hundred (500) weeks.

72-427. PERMANENT IMPAIRMENT EVALUATION NOT EXCLUSIVE. — The “whole man” income benefit evaluation for purposes of computing scheduled and unscheduled permanent impairment shall not be deemed to be exclusive for the purposes of fixing the evaluation of permanent disability.

72-428. SCHEDULED INCOME BENEFITS FOR LOSS OR LOSSES OF USE OF BODILY MEMBERS. — An employee who suffers a permanent disability less than total and permanent shall, in addition to the income benefits payable during the period of recovery, be paid income benefits for such permanent disability in an amount equal to fifty-five percent (55%) of the average weekly state wage for not less than the percentages of loss of the member, or of the whole man, stated against the following scheduled permanent impairments respectively:

(1) Amputations of Upper Extremities

<table>
<thead>
<tr>
<th>Permanent Impairments of</th>
<th>Upper</th>
<th>Whole</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Digit</td>
<td>Hand</td>
</tr>
<tr>
<td>Forequarter amputation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disarticulation at shoulder joint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation of arm above deltoid insertion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation of arm between deltoid insertion and elbow joint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disarticulation at elbow joint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation of forearm below elbow joint proximal to insertion of biceps tendon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation of forearm below elbow joint distal to insertion of biceps tendon</td>
<td>100%</td>
<td>90%</td>
</tr>
<tr>
<td>Disarticulation at wrist joint</td>
<td>100%</td>
<td>90%</td>
</tr>
<tr>
<td>Midcarpal or mid-metacarpal amputation of hand</td>
<td>100%</td>
<td>90%</td>
</tr>
<tr>
<td>Amputation of all fingers except thumb at metacarpophalangeal joints</td>
<td>60%</td>
<td></td>
</tr>
<tr>
<td>Amputation of Thumb</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At metacarpophalangeal joint or with resection of carpometacarpal bone</td>
<td>100%</td>
<td>40%</td>
</tr>
<tr>
<td>At interphalangeal joint</td>
<td>75%</td>
<td>30%</td>
</tr>
<tr>
<td>Amputation of Index Finger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At metacarpophalangeal joint or with resection of metacarpal bone</td>
<td>100%</td>
<td>25%</td>
</tr>
<tr>
<td>At proximal interphalangeal joint</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>At distal interphalangeal joint</td>
<td>45%</td>
<td>11%</td>
</tr>
<tr>
<td>Amputation of Middle Finger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At metacarpophalangeal joint or with resection of metacarpal bone</td>
<td>100%</td>
<td>20%</td>
</tr>
<tr>
<td>At proximal interphalangeal joint</td>
<td>80%</td>
<td>16%</td>
</tr>
<tr>
<td>At distal interphalangeal joint</td>
<td>45%</td>
<td>9%</td>
</tr>
<tr>
<td>Amputation of Ring Finger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At metacarpophalangeal joint or with resection of metacarpal bone</td>
<td>100%</td>
<td>10%</td>
</tr>
<tr>
<td>At proximal interphalangeal joint</td>
<td>80%</td>
<td>8%</td>
</tr>
<tr>
<td>At distal interphalangeal joint</td>
<td>45%</td>
<td>5%</td>
</tr>
<tr>
<td>Amputation of Little Finger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At metacarpophalangeal joint or with resection of metacarpal bone</td>
<td>100%</td>
<td>5%</td>
</tr>
</tbody>
</table>
(2) Amputations of Lower Extremities

Permanent Impairments of

<table>
<thead>
<tr>
<th>Amputation Description</th>
<th>Lower Extremity</th>
<th>Whole Man</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hemipelvectomy</td>
<td>50%</td>
<td></td>
</tr>
<tr>
<td>Disarticulation at hip joint</td>
<td>100%</td>
<td>40%</td>
</tr>
<tr>
<td>Amputation above knee joint with</td>
<td>100%</td>
<td>40%</td>
</tr>
<tr>
<td>short thigh stump (3” or less</td>
<td></td>
<td></td>
</tr>
<tr>
<td>below tuberosity of ischium</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation above knee joint with</td>
<td>90%</td>
<td>36%</td>
</tr>
<tr>
<td>with functional stump</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disarticulation at knee joint</td>
<td>90%</td>
<td>36%</td>
</tr>
<tr>
<td>Gritti-Stokes amputation</td>
<td>90%</td>
<td>36%</td>
</tr>
<tr>
<td>Amputation below knee joint with</td>
<td>90%</td>
<td>36%</td>
</tr>
<tr>
<td>short stump (3” or less below</td>
<td></td>
<td></td>
</tr>
<tr>
<td>intercondylar notch</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amputation below knee joint with</td>
<td>100%</td>
<td>70%</td>
</tr>
<tr>
<td>functional stump</td>
<td></td>
<td>28%</td>
</tr>
<tr>
<td>Amputation at ankle (Syme)</td>
<td>100%</td>
<td>70%</td>
</tr>
<tr>
<td>Partial amputation of foot</td>
<td>75%</td>
<td>53%</td>
</tr>
<tr>
<td>(Chopart’s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mid-metatarsal amputation</td>
<td>50%</td>
<td>35%</td>
</tr>
<tr>
<td>Amputation of all toes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>At metatarsophalangeal joints</td>
<td>30%</td>
<td>21%</td>
</tr>
<tr>
<td>Amputation of Great Toe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With resection of metatarsal bone</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>At metatarsophalangeal joint</td>
<td>100%</td>
<td>18%</td>
</tr>
<tr>
<td>At interphalangeal joint</td>
<td>75%</td>
<td>14%</td>
</tr>
<tr>
<td>Amputation of Lesser Toe (2nd-5th)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With resection of metatarsal bone</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>At metatarsophalangeal joint</td>
<td>100%</td>
<td>3%</td>
</tr>
<tr>
<td>At proximal interphalangeal joint</td>
<td>80%</td>
<td>2%</td>
</tr>
<tr>
<td>At distal interphalangeal joint</td>
<td>45%</td>
<td>1%</td>
</tr>
</tbody>
</table>
(3) Loss of Vision and Hearing

<table>
<thead>
<tr>
<th>Condition</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total loss of vision of one eye</td>
<td>30%</td>
</tr>
<tr>
<td>Loss of one eye by enucleation</td>
<td>35%</td>
</tr>
<tr>
<td>Total loss of binaural hearing</td>
<td>35%</td>
</tr>
</tbody>
</table>

(4) Total loss of use. Income benefits payable for permanent disability attributable to permanent total loss of use or comparable total loss of use of a member shall be not less than as for the loss of the member.

(5) Partial loss or partial loss of use. Income benefits payable for permanent partial disability attributable to permanent partial loss or loss of use, of a member shall be not less than for a period as the permanent impairment attributable to the partial loss or loss of use of the member bears to total loss of the member.

72-429. UNSCHEDULED PERMANENT DISABILITIES. - In all other cases of permanent disabilities less than total not included in the foregoing schedule the amount of income benefits, computed on the basis set forth in section 72-409, shall be not less than the evaluation in relation to the percentages of loss of the members, or of loss of the whole man, stated against the scheduled permanent impairments, as the disabilities bear to those produced by the permanent impairments named in the schedule.

72-430. PERMANENT DISABILITY DETERMINATION OF PERCENTAGES - SCHEDULE. - (1) Matters to be considered. In determining the percentages of the permanent disabilities less than total, account shall be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the afflicted employee to compete in an open labor market, and other factors as the commission may deem relevant, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

(2) Preparation of schedules - Availability for inspection - Prima facie evidence. The commission may prepare, adopt and from time to time amend a schedule for the determination of the percentages of unscheduled permanent injuries less than total, including, but not limited to, a schedule for partial loss of binaural hearing and for loss of teeth, and methods for determination thereof. Such schedule shall be available for public inspection,
and without formal introduction in evidence shall be prima facie evidence of the percentages of permanent disabilities to be attributed to the injuries or diseases covered by such schedule.

72-431. INHERITABILITY OF SCHEDULED OR UNSCHEDULED INCOME BENEFITS. — When an employee who has sustained disability compensable as a scheduled or unscheduled permanent disability less than total, and who has filed a valid claim in his lifetime, dies from causes other than the injury or occupational disease before the expiration of the compensable period specified, the income benefits specified and unpaid at the employee’s death, whether or not accrued or due at the time of his death, shall be paid, under an award made before or after such death, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this subsection and in the order named:

(1) To the dependent widow or widower, if there is no child under the age of eighteen (18) or child incapable of self-support; or

(2) If there are both such a widow or widower and such a child or children, one-half (½) to such widow or widower and the other one-half (½) to such child or children; or

(3) If there is no such widow or widower but such a child or children, then to such child or children; or

(4) If there is no survivor in the above classes, then to the personal representative of the decedent.

72-432. MEDICAL SERVICES, APPLIANCES AND SUPPLIES. — (1) The employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required or be requested by the employee immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

(2) The employer shall also furnish necessary replacements or repairs of appliances and prostheses, but no oftener than once every five (5) years unless the need therefor within any five (5) year period is due to lack of proper care by the employee. If the appliance or prostheses is damaged or broken in an industrial accident, the employer, for whom the employee was working at the time of accident, will be liable for replacement or repair.

(3) In addition to the income benefits otherwise payable, the employee
who is entitled to income benefits shall be paid an additional sum in an amount as may be determined by the commission as by it deemed necessary, as a medical service, when the constant service of an attendant is necessary by reason of total blindness of the employee or the loss of both hands or both feet or the loss of use thereof, or by reason of being paralyzed and unable to walk, or by reason of other disability resulting from the injury or disease actually rendering him so helpless as to require constant attendance. The commission shall have authority to determine the necessity, character and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital or rehabilitation facility when in its judgment such change is desirable or necessary.

(4) The employee upon reasonable grounds, may petition the commission for a change of physician to be provided by the employer.

(5) An employee shall not be responsible for charges of physicians to whom he has been referred for treatment of his injury or occupational disease by an employer designated physician.

72-433. SUBMISSION OF INJURED EMPLOYEE TO MEDICAL EXAMINATION. — (1) After an injury or contraction of an occupational disease and during the period of disability the employee, if requested by the employer or ordered by the commission, shall submit himself for examination at reasonable times and places to a duly qualified physician or surgeon. The employee shall be reimbursed for his expenses of necessary travel and subsistence in submitting himself for any such examination and for loss of wages, if any.

(2) The employee shall have the right to have a physician or surgeon designated and paid by himself present at an examination by a physician or surgeon so designated by the employer. Such right, however, shall not be construed to deny the employer's designated physician or surgeon the right to visit the injured employee during reasonable times and under all reasonable conditions during disability.

72-434. EFFECT OF REFUSING MEDICAL EXAMINATION – DISCONTINUANCE OF COMPENSATION. — If an injured employee refuses to submit himself to or in any way obstructs an examination by a physician or surgeon designated by the commission or the employer, his right to take or prosecute any proceeding under this law shall be suspended until such refusal or obstruction ceases, and no compensation shall be payable for the period during which such refusal or obstruction continues.

72-435. INJURIOUS PRACTICES – SUSPENSION OR REDUCTION OF COMPENSATION.— If an injured employee persists in unsanitary or
unreasonable practices which tend to imperil or retard his recovery the commission may order the compensation of such employee to be suspended or reduced.

72-436. BURIAL EXPENSE. — If death results from the injury within four (4) years, the employer shall pay to the person entitled to compensation, or if there is none then to the personal representative of the deceased employee, the actual amount of burial expenses as defined in 72-102(3).

72-437. OCCUPATIONAL DISEASES — RIGHT TO COMPENSATION. — When an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, or dies as a result of such disease, and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, or, in case of his death, his dependents shall be entitled to compensation.

72-438. OCCUPATIONAL DISEASES. — Compensation shall be payable for disability or death of an employee resulting from the following occupational diseases:

(1) Poisoning by lead, mercury, arsenic, zinc, or manganese, their preparations or compounds in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(2) Carbon monoxide poisoning or chlorine poisoning in any process or occupation involving direct exposure to carbon monoxide or chlorine in buildings, sheds, or enclosed places.

(3) Poisoning by methanol, carbon bisulphide, hydrocarbon distillates (naphthas and others) or halogenated hydrocarbons, or any preparations containing these chemicals or any of them, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(4) Poisoning by benzol or by nitro, amido, or amino-derivatives of benzol (dinitro-benzol, anilin and others) or their preparations or compounds in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(5) Glanders in the care or handling of any equine animal or the carcass of any such animal.

(6) Radium poisoning by or disability due to radioactive properties of substances or to Roentgenray (X-ray) in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
(7) Poisoning by or ulceration from chronic acid or bichromate of ammonium, potassium, or sodium or their preparations, or phosphorus preparations or compounds, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(8) Ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product, or residue of any of these substances, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(9) Dermatitis venenata, that is, infection or inflammation of the skin, furunculosis excepted, due to oils, cutting compounds, lubricants, liquids, fumes, gases, or vapors in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(10) Anthrax occurring in any occupation involving the handling of or exposure to wool, hair, bristles, hides, skins, or bodies of animals either alive or dead.

(11) Silicosis in any occupation involving direct contact with, handling of, or exposure to dust of silicon dioxide (SiO₂).

(12) Cardiovascular or pulmonary or respiratory diseases of a paid fireman, employed by a municipality, village or fire district as a regular member of a lawfully established fire department, caused by over exertion in times of stress or danger or by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes or other toxic gases arising directly out of, and in the course of, his employment.

The above enumerated occupational diseases are not to be taken as exclusive.

72-439. LIMITATIONS. – An employer shall not be liable for any compensation for an occupational disease unless such disease is actually incurred in his employment and, unless disablement or death results within four (4) years in case of silicosis, or one (1) year in case of any other occupational disease, after the last injurious exposure to such disease in such employment, or, in case of death, unless death follows continuous disability from such disease, commencing within the period above limited for which compensation has been paid or awarded or claim made as provided in this chapter, and results within four (4) years after the last injurious exposure.

An employer shall not be liable for any compensation for a non-acute occupational disease unless the employee was exposed to the hazard of such disease for a period of sixty (60) days for the same employer.
72-440. TIME OF DEPENDENCY. — No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased, which would give right to compensation, arose subsequent to the beginning of the first compensable disability, save only to posthumous children of a marriage existing at the beginning of such disability.

72-441. NO COMPENSATION IN CASE OF MISREPRESENTATION. — No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease.

72-442. WILLFUL SELF-EXPOSURE. — An employee or his dependents shall not be entitled to compensation hereunder if he fails to observe such rules and regulations as may be promulgated or approved by the commission and posted in the plant by the employer, or to use the protective and safety devices furnished by his employer, as prescribed by the commission.

72-443. PERIOD OF EXPOSURE IN SILICOSIS CASES. — No claim for disability or death from silicosis shall be maintained or prosecuted unless during the ten (10) years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust over a period of not less than five (5) years, the last two (2) of which shall have been in this state, under a contract of employment existing in this state, provided, that if the employee shall have been employed by the same employer during the whole of such five (5) year period his right to compensation against such employer shall not be affected by the fact that he had been employed during any part of such period outside of this state.

72-444. NO COMPENSATION FOR PARTIAL DISABILITY FROM SILICOSIS. — Compensation shall not be payable for partial disability due to silicosis.

72-445. COMPENSATION FOR TOTAL DISABILITY OR DEATH FROM COMPLICATED SILICOSIS. — In case of disability or death from silicosis, complicated with tuberculosis of the lungs, income benefits shall be payable as for uncomplicated silicosis, provided, that the silicosis was an essential factor in causing such disability or death. In case of disability or death from silicosis complicated with any other disease, or from any other disease complicated with silicosis, the income benefits shall be reduced as provided in section 72-406.
72-446. NON-DISABLING SILICOSIS COMPENSATION UPON SEVERANCE FROM EMPLOYMENT. — (1) When an employee, because he has non-disabling silicosis, is discharged from employment in which he is engaged, or when such an employee, after an examination as provided in subsection (2) of this section, and a finding by the medical panel that it is inadvisable for him to continue in his employment, terminates his employment, the commission may allow such compensation on account of such termination of employment as it may deem just, as support money pending his change of employment, payable as in this law elsewhere provided, but in no case to exceed five thousand dollars ($5,000).

(2) Upon application of any employer or employee, the commission may direct any employee of such employer or any employee who, in the course of his employment has been exposed to the inhalation of silica dust, to submit to a medical examination to determine whether the employee has silicosis, and the degree thereof. The results of the examination shall be submitted to the commission, which shall submit copies of such reports to the employer and employee, who shall have opportunity to rebut the same, provided, request therefor is made to the commission within thirty (30) days from the mailing of such report to the parties. The commission shall make its findings as to whether it is inadvisable for the employee to continue in his employment.

72-447. RECURRING DERMATITIS. — A person who has suffered disability from dermatitis and has received income benefits therefor shall not be entitled to income benefits for disability from a later attack of dermatitis due to substantially the same cause, unless immediately preceding the date of the later disablement he has been engaged in the occupation to which the recurrence of the disease is ascribed and under the same employer for at least sixty (60) days.

72-448. NOTICE OF CONTRACTION OF DISEASE AND CLAIM FOR COMPENSATION. — (1) Except in cases of silicosis for which notice of contraction and claim for compensation may be given at any time within the four (4) year limitation provided in section 72-439, unless written notice of the manifestation of an occupational disease shall be given by the employee to the employer within sixty (60) days after the first manifestation thereof, and within five (5) months after the employment has ceased in which it is claimed the disease was contracted, and, in case of death, unless written notice of such death be given within ninety (90) days after the occurrence and unless claim for disability or death shall be made
within one (1) year after the disablement or death respectively, all rights to compensation for disability or death from injury due to an occupational disease shall be forever barred.

(2) Provided, that when disablement or death is the result of exposure to radioactive properties of substances or sources of the ionizing radiation in any occupation involving direct contact therewith, handling thereof or exposure thereto, and other unusual cases of occupational diseases, written notice may be given any time and a claim filed within one (1) year after the date upon which the employee first suffered incapacity, disability or death from such exposure and knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment.

(3) When compensation payments have been made and discontinued and further compensation is claimed, the claim for such further compensation shall be made within one (1) year after the last payment.

72-449. POST MORTEM EXAMINATION. - Upon the filing of a claim for compensation for death from an occupational disease when an autopsy is necessary accurately and scientifically to ascertain and determine the cause of death, the autopsy shall be ordered by the commission. The commission may designate a duly licensed physician, who is a specialist in such examination, to perform or attend the autopsy and to certify his findings thereon. Such findings shall be filed with the commission and shall be a public record. The commission also may exercise such authority on its own motion or on application made to it at any time by any party in interest, in regard to the cause of death or the existence of any occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when so ordered, and no compensation shall be payable during the continuance of such refusal.

CHAPTER 5

INDUSTRIAL COMMISSION

72-501. CREATION OF COMMISSION - APPOINTMENT, TERM OF OFFICE - QUALIFICATIONS - AFFILIATIONS - EFFECT OF ACCEPTING APPOINTMENT - VACANCIES - REMOVAL OF MEMBER FOR CAUSE. - (1) A commission is hereby created to be known as the industrial commission consisting of three (3) members, to be appointed by the governor, with the approval of the senate.

(2) The term of each member of the commission shall be six (6) years, except that the members first appointed shall be those serving as members of
the industrial accident board on the date this law becomes effective, each to hold office for the balance of his term for which appointed, to-wit, one (1) until the second Monday of January, 1973, one (1) until the second Monday of January, 1975, and one (1) until the second Monday of January, 1977. On the expiration of his term, an incumbent member may continue in tenure until his successor is appointed and qualified.

(3) No person shall be eligible to appointment as a member of the commission unless he shall be at least thirty (30) years of age, a qualified elector and a resident of this state not less than three (3) years consecutively next preceding his appointment, of good moral character and of previous experience and training to qualify him efficiently and justly to discharge the duties of his office.

(4) Not more than one (1) of the appointees to the commission shall be a person who, on account of his previous vocations, employment or affiliations can be classed as a representative of employers, and not more than one (1) of the appointees shall be a person who on account of his previous vocation, employment or affiliations can be classed as a representative of workmen. The third appointee shall be an attorney at law duly licensed to practice in this state. Not more than two (2) of the members of the commission shall belong to the same political party.

(5) During his tenure in office a member shall devote full time to his duties as a member of the commission. As an official exercising judicial functions, he shall not engage in partisan political activities and shall conform his conduct to commonly acceptable standards of judicial ethics.

(6) Any vacancy during a term may be filled by the governor with the approval of the senate. If any appointment is made during the recess of the legislature it shall be subject to confirmation by the senate during its next ensuing session.

(7) A member may be disciplined or removed or retired from office by the judicial council in accordance with the procedure prescribed in section 1-2103, Idaho Code, for any cause set forth therein, subject to the review procedure and disposition of such a proceeding by the supreme court as in said section provided.

72-502. REFERENCES TO INDUSTRIAL COMMISSION TO INCLUDE INDUSTRIAL ACCIDENT BOARD. — The references in the Idaho Constitution, Idaho Code and Idaho Rules of Civil Procedure to the "industrial accident board" and "board" shall be deemed to be references to the industrial commission.
72-503. SALARY. — The annual salary of each member of the commission shall be sixteen thousand five hundred dollars ($16,500) to be paid from sources set by the legislature.

72-504. ORGANIZATION — CHAIRMAN — SECRETARY. — The members of the commission shall select one (1) of their members as chairman, and shall select a person qualified, in the judgment of the commission, by experience and training, as secretary, who need not be a member, each of whom shall perform such duties as in this law prescribed and as the commission may from time to time direct.

72-505. QUORUM — MAJORITY TO ACT — VACANCY. —
(1) Quorum. A majority of the commission shall constitute a quorum for the transaction of business.

(2) Act of commission by majority. The act of a majority of the commission when in sessions as the commission shall be deemed to be the act of the commission.

(3) Effect of vacancy. A vacancy on the commission shall not impair the right of the remaining members to perform the duties and exercise all the power and authority of the commission.

72-506. ACTS OF COMMISSION OR REFERENCE — HEARING OFFICERS. — (1) Any investigation, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any member thereof or any hearing officer, referee or examiner appointed by the commission for that purpose.

(2) Every finding, order, decision or award made by any member, hearing officer, referee, or examiner pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission, and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission.

72-507. SEAL. — The commission shall have a seal of which the secretary shall be custodian, bearing the following inscription: "Industrial Commission, State of Idaho, seal." The seal shall be affixed to all writs, orders, awards, authentications of copies of records and to such other instruments as the commission shall direct.

72-508. AUTHORITY TO ADOPT RULES AND REGULATIONS. — Notwithstanding the provisions of chapter 52, title 67, Idaho Code, the commission shall have authority to promulgate reasonable rules and regulations for effecting the purposes of this act. Rules and regulations as promulgated, if not inconsistent with law, shall be binding in the administration of this law.
72-509. OFFICES AND SUPPLIES. — (1) The principal office of the
commission shall be located in the capital city of the state.

(2) The commission may establish such branch offices, divisions,
sections and advisory committees in such localities in this state as it deems
necessary to administer this act, in addition to the offices and committees
herein otherwise provided for, and shall have power to rent temporary
quarters deemed requisite for the purpose of administering this law.

(3) The commission may acquire office furniture, furnishings,
equipment, stationery and supplies deemed requisite for the purpose of
administering this law.

72-510. PAYMENT OF EXPENSES. — The commission shall make
such expenditures as may be necessary for the adequate administration of
this law, including salaries, other personal services, actual and necessary
traveling and other expenses and disbursements of the members of the
commission, its officers and employees, incurred while on official business,
either within or without the state, office rent, the purchase and rental of
vehicles, books, periodicals, office equipment and supplies, printing and
binding, cost of membership in official organizations, attendance at meetings
and conventions and for all other purposes concerned with subject matters
cognizable within this law. All expenditures of the commission, unless
otherwise provided in this law, shall be paid out of the industrial
administration fund after approval by the board of examiners.

72-511. RECORDS AND FORMS. — The commission shall cause to be
printed such blank forms as it shall deem requisite to facilitate or promote
the efficient administration of this law. It shall provide a book in which shall
be entered the minutes of all its proceedings, a book of record in which shall
be recorded all awards, and such other books or records as it shall deem
requisite for the purposes and efficient administration of this law. All such
records shall be kept in the office of the commission.

72-512. REPORTS. — The commission shall have the power and
authority to publish and distribute at its discretion from time to time, in
addition to its annual report, such further reports and bulletins covering its
operation, proceedings and matters relative to its work as it may deem
advisable.

72-513. SECRETARY, HEARING OFFICERS, EXAMINERS AND
REFEREES — EXEMPT FROM PERSONNEL SYSTEM. — The secretary,
hearing officers, examiners and referees, shall be exempt from the system of
personnel administration prescribed by chapter 53, title 67, Idaho Code.
72-514. ASSISTANTS. — The commission shall have the power to employ during its pleasure such additional officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this law or to perform the duties and exercise the powers conferred by law upon the commission.

72-515. FEES. — The commission shall have power and authority to fix, charge and collect fees, as follows:

(1) For copies of papers and records not required to be certified or otherwise authenticated by the commission;

(2) For certified copies of official documents and orders filed in its offices;

(3) For copies of the evidence taken at any proceeding furnished any person other than the claimant or the employer; transcripts of evidence shall be furnished the claimant and the employer on request;

(4) For publications issued under its authority.

The fees charged and collected under this section shall be deposited monthly in the state treasury to the credit of the industrial administration fund, accompanied by a detailed statement.

72-516. REPORTS. — (1) Biennially the commission shall make a report to the governor and through him to the state legislature on the operation of this law, including recommendations as to improvements in the law and administration thereof, and a statistical analysis of industrial injury and occupational disease experience and compensation costs.

(2) The commission may prepare and publish such other statistical and informational reports and analyses based upon the reports and records available which, in its opinion, will be useful in attaining public understanding of the purposes, effectiveness, costs, coverage and administrative procedures of workmen’s compensation and rehabilitation in the state, and in providing basic information regarding the occurrence and sources of industrial injuries and occupational diseases for the use of public and private agencies engaged in industrial injury and occupational disease prevention activities.

72-517. COOPERATION WITH OTHER AGENCIES. — The commission shall have the authority to enter into cooperative agreements with the commissioner of labor, inspector of mines, state board of health, department of employment, state board of education, state board of vocational education, department of public assistance, state nuclear energy commission, Veterans Administration and with other state agencies and with
their successors, and with federal and private agencies, and to cooperate with programs sponsored by all such agencies to facilitate the carrying out of the purposes of this law.

72-518. DUTIES OF ATTORNEY GENERAL – REPRESENTATION IN COURT. — (1) In any civil action to enforce the provisions of this law, or of any rule or regulation issued pursuant thereto, the commission and the state shall be represented by the attorney general, or if an action is brought in any court of any other state, by any attorney qualified to appear in the courts of that state.

(2) Any criminal action for violation of any provision of this law or of any rule or regulation issued pursuant thereto shall be prosecuted by the attorney general, or, at his request and under his direction, by the prosecuting attorney of any county wherein the defendant resides or has a place of business.

72-519. CREATION OF INDUSTRIAL ADMINISTRATION FUND – PURPOSE. — A fund is hereby created to be known as the industrial administration fund for the purpose of providing funds for administering the workmen’s compensation law.

72-520. INDUSTRIAL COMMISSION ADMINISTRATOR OF FUND. — The industrial administration fund shall be administered by the commission without liability on the part of the state or the commission beyond the amount of the fund.

72-521. STATE TREASURER CUSTODIAN OF FUND – DUTIES. — The state treasurer shall be custodian of the industrial administration fund. He shall give a separate and an additional bond in an amount and with sureties approved by the commissioner of insurance, conditioned for the faithful performance of his duty as custodian of this fund.

72-522. DEPOSIT AND INVESTMENT OF FUND – INTEREST. — The state treasurer shall deposit or, on order of the commission, invest any portion of the industrial administration fund not needed for immediate or currently anticipated use, in the manner and subject to all the provisions of law respecting the depositing and investing of state funds by him. Interest earned by such portion of the fund so invested shall be collected by the state treasurer and placed to the credit of the fund.

72-523. SOURCE OF FUND – PREMIUM TAX. — The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the commissioner of insurance to transact workmen’s compensation insurance in Idaho, in addition to all other
payments required by statute, shall semiannually, within thirty (30) days after January 1 and July 1 of each year, pay into the state treasury to be deposited in the industrial administration fund a premium tax as follows:

(1) Every surety, other than self-insurers authorized to transact workmen's compensation insurance, a sum equal to one and three-tenths percent (1 3/10%) of the net premiums collected by each respectively on workmen's compensation insurance in this state during the preceding six (6) months' period, but in no case less than ten dollars ($10); and

(2) Each self-insurer, a sum equal to one and three-tenths percent (1 3/10%) of the amount of premium such employer who is a self-insurer would be required to pay as premium to the state insurance fund, but in no case less than ten dollars ($10); provided, that any insurer making any payment into the industrial administration fund under the provisions of this section shall be entitled to deduct the full sums so paid from any sum it is required to pay into the department of insurance as a tax on premiums.

72-524. SURETIES' REPORTS OF TAX BASIS. Every surety, other than a self-insurer shall, under oath of the person or officers making the report, within thirty (30) days after January 1 and July 1 of each year, report to the commission the net amount of premium collected on workmen's compensation insurance in this state during the preceding six (6) months' period, and every self-insurer shall, within thirty (30) days after January 1 and July 1 of each year, report in the same manner to the commission the total payroll for the preceding six (6) months' period.

72-525. CIVIL ACTION FOR COLLECTION OF PREMIUM TAX – DUTIES OF ATTORNEY GENERAL. If any surety required to make payment under the provisions of this law shall fail, for a period of ten (10) days after such payment is due as provided by section 72-523, to pay into the state treasury to be deposited in the industrial administration fund the amount due, it shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount due, and the amount collected shall be paid into the state treasury to be deposited in the industrial administration fund.

72-526. PENALTY FOR DEFAULT – COLLECTION BY CIVIL ACTION – DUTY OF ATTORNEY GENERAL. Any surety who is in default for ten (10) days in any payment required to be made under the provisions of this law shall be liable for a penalty for every ten (10) day period or any part thereof during which such failure continues of ten percent (10%) of the amount originally due. It shall be the duty of the attorney
general to bring a civil action in the name of the state in the proper court to collect the penalty herein provided, and the amount collected shall be paid into the state treasury to be deposited in the industrial administration fund.

72-527. CIVIL PENALTY FOR SURETY'S MISREPRESENTATION — DUTY OF ATTORNEY GENERAL. — Any surety who shall willfully misrepresent the amount to be paid into the state treasury under the provisions of this law shall be liable to the state for an amount ten (10) times the difference between the payment made and the amount that should have been paid had such misrepresentation not been made; the liability to the state under this section shall be enforced in a civil action brought by the attorney general in the name of the state in the proper court, and the amount collected shall be paid into the state treasury to be deposited in the industrial administration fund.

CHAPTER 6
EMPLOYERS' REPORTS

72-601. RECORD OF INJURIES — NECESSITY — AVAILABILITY — FAILURE TO KEEP. — (1) Employers' records of injuries. An employer shall keep a record of each injury and occupational disease fatal or otherwise, arising out of and in the course of employment, reported to the employer or of which he otherwise may have knowledge. Such record shall include a description of the injury or disease and the manner in which the same occurred, a statement of the time during which an employee was unable to work because of the affliction and such other information as the commission may require to be kept.

(2) Failure to keep records a misdemeanor. Any employer who willfully fails or refuses to keep records of injuries and occupational diseases as required by this section shall be guilty of a misdemeanor.

72-602. EMPLOYERS' NOTICE OF INJURY AND REPORTS. — (1) First report — Notice of injury or occupational disease. As soon as practicable but not later than ten (10) days after the occurrence of an injury or occupational disease, requiring treatment by a physician or resulting in absence from work for one (1) day or more, a report thereof shall be made in writing by the employer to the commission in the form prescribed by the commission; the mailing to the commission of the written report within the time prescribed shall be compliance.

(2) Extended disability — Sixty (60) day supplemental and final reports. If the disability extends beyond a period of sixty (60) days, the employer shall make a supplemental report to the commission at the end of
such period, in the form prescribed by the commission, that the employee is still disabled.

(3) Supplemental report on termination of disability. Upon termination of the disability of the employee, the employer shall make a final supplemental report to the commission, in the form prescribed by the commission.

(4) Summary of compensation and medical services, paid and payable. Within sixty (60) days after the termination of the disability of the employee, the employer or other party liable to pay the compensation provided for by this act shall file with the commission a summary showing the total compensation payments made or to be made for such employee.

(5) Failure to file report a misdemeanor. An employer who willfully fails or refuses to make any report required by this section shall be guilty of a misdemeanor.

72-603. EMPLOYERS' REPORT OF EMPLOYEES. —
(1) Requirement to keep records and to report. Subject to the provisions of this law, every employer shall keep an accurate record of the number and job classification of his employees and the wages paid, and upon demand of the commission shall furnish the commission a sworn statement of the same. Such records shall not be open to inspection except on request of the commission. The commission shall have the right, at any time and as often as it requires, to verify the number of employees and the amount of the payroll, and to inspect or cause to be inspected such records.

(2) Information from employer not public — Unauthorized disclosure a misdemeanor. The information contained in such sworn statement shall not be open to public inspection, and any person who, without authority from the commission or unless required by law, shall disclose the same shall be guilty of a misdemeanor.

72-604. FAILURE TO REPORT TOLLS EMPLOYEE LIMITATIONS. — When the employer has knowledge of an occupational disease, injury, or death and willfully fails or refuses to file the report thereof as required by section 72-602(1), the limitations prescribed in section 72-701, shall not begin to run against the claim of any person seeking compensation until such report shall have been filed.

CHAPTER 7
PROCEDURES

72-701. NOTICE OF INJURY AND CLAIM FOR COMPENSATION — LIMITATIONS. — No proceedings under this law, except in cases of
occupational diseases specially provided, shall be maintained unless a notice of the accident or of manifestation of the occupational disease shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof, and unless a claim for compensation with respect thereto shall have been made within one (1) year after the date of the accident or manifestation or, in the case of death, then within one (1) year after such death, whether or not a claim for compensation has been made by the employee. Such notice and such claim may be made by any person claiming to be entitled to compensation or by someone in his behalf. If payments of compensation have been made voluntarily the making of a claim within said period shall not be required.

72-702. FORM OF NOTICE AND CLAIM. — Such notice and such claim shall be in writing; the notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature and cause of the injury or disease and shall be signed by him or by a person on his behalf, or, in the event of his death, by any one (1) or more of his dependents, or by a person on their behalf. The notice may include the claim.

72-703. GIVING OF NOTICE AND MAKING OF CLAIM. — Any notice under this law shall be given to the employer, or, if the employer is a partnership, then to any one (1) of the partners. If the employer is a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by registered or certified mail addressed to the employer at his or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

72-704. SUFFICIENCY OF NOTICE — KNOWLEDGE OF EMPLOYER. — A notice given under the provisions of section 72-701, shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the injury, or disease, or otherwise, unless it is shown by the employer that he was in fact prejudiced thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this law if it is shown that the employer, his agent or representative had knowledge of the injury, or that the employer has not been prejudiced by such delay or want of notice.

72-705. LIMITATION OF TIME — MINORS AND INCOMPETENTS. — No limitation of time provided in this law shall run as against any person
who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

72-706. LIMITATION ON TIME ON APPLICATION FOR HEARING. 
- (1) When no compensation paid. When a claim for compensation has been made and no compensation has been paid thereon, the claimant, unless misled to his prejudice by the employer or surety, shall have one (1) year from the date of making claim within which to make and file with the commission an application requesting a hearing and an award under such claim.

(2) When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury or date of first manifestation of an occupational disease, within which to make and file with the commission an application requesting a hearing for further compensation and award.

(3) Relief barred. In the event an application is not made and filed as in this section provided, relief on any such claim shall be forever barred.

72-707. GENERAL POWERS OF COMMISSION JURISDICTION OF DISPUTES. - All questions arising under this law, if not settled by agreement or stipulation of the interested parties with the approval of the commission, except as otherwise herein provided, shall be determined by the commission.

72-708. PROCESS AND PROCEDURE. - Process and procedure under this law shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity.

72-709. ATTENDANCE OF WITNESSES - PRODUCTION OF DOCUMENTS - DEPOSITION - WITNESS FEES. - (1) The commission or any member thereof or any hearing officer, examiner or referee appointed by the commission shall have the power to subpoena witnesses, administer oaths, take testimony, issue subpoenas duces tecum, and to examine such of the books and records of the parties to a proceeding as relates to the questions in dispute.

(2) The district court shall have the power to enforce by proper proceedings the attendance and testimony of witnesses, and the production and examination of books, papers and records.

(3) The testimony of any witness for use as evidence in any proceeding may be taken by deposition or interrogatories.

(4) No person shall be required to attend as a witness in any such
proceeding unless his lawful mileage and witness fee for one (1) day's 
attendance shall first be paid or tendered to him.

72-710. TRANSCRIPTS OF PROCEEDINGS. — A stenographic or 
machine transcription of any proceeding or of testimony adduced at any 
hearing, shall be taken by the commission.

72-711. COMPENSATION AGREEMENTS. — If the employer and the 
allicted employee reach an agreement in regard to compensation under this 
law, a memorandum of the agreement shall be filed with the commission, 
and, if approved by it, thereupon the memorandum shall for all purposes be 
an award by the commission and be enforceable under the provisions of 
section 72-735, unless modified as provided in section 72-719. An agreement 
shall be approved by the commission only when the terms conform to the 
provisions of this law.

72-712. HEARINGS. — Upon application of any party to the 
proceeding, or when ordered by the commission or a member thereof or a 
hearing officer, referee or examiner, and when issues in a case cannot be 
resolved by pre-hearing conferences or otherwise, a hearing shall be held for 
the purpose of determining the issues.

72-713. NOTICE OF HEARINGS — SERVICE. — The commission 
shall give at least ten (10) days' written notice of the time and place of 
hearing and of the issues to be heard, either by personal service or by 
registered or certified mail. Service by mail shall be deemed complete when a 
copy of such notice is deposited in the United States post office, with 
postage prepaid, addressed to a party at his last known address, as shown in 
the records and files of the commission. Evidence of service by certificate or 
affidavit of the person making the same shall be filed with the commission.

72-714. HEARINGS, WHERE AND HOW CONDUCTED. — (1) The 
hearing may be held in the city or town or within the county where the 
injury or disease occurred, or in such other place as the commission deems 
most convenient for the parties and most appropriate for ascertaining their 
rights.

(2) If the place of hearing claimant's testimony is outside the county 
and the claimant's presence is deemed necessary, the commission shall cause 
or require to be paid to the claimant a reasonable sum to reimburse him for 
his travel expense, unless otherwise agreed by the parties.

(3) The commission, or member thereof, or a hearing officer, referee or 
examiner, to whom the matter has been assigned, shall make such inquiries 
and investigations as may be deemed necessary.
(4) The authority of the commission, or of a member, hearing officer, referee or examiner, shall include the right to enter premises at any reasonable time where an injury, disease or death has occurred and to make such examination of any tool, appliance, process, machinery or environmental or other condition as may be relevant to a determination of the cause and circumstances of the injury, disease, or death.

72-715. DISOBEDIENCE TO COMMISSION'S DIRECTIVE PROCESS. — If any person in proceedings before the commission or a member thereof, or hearing officer, referee or examiner, disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same or neglects to produce, after having been ordered to do so, any pertinent book, paper or document or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath or affirmation as a witness, or after taking the oath or affirmation refuses to be examined according to law, the commission, or member thereof, or hearing officer, referee or examiner, shall certify the facts to the district court in the jurisdiction where the offense is committed and the court, if the evidence so warrants, shall punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process in the presence of the court.

72-716. RECORD OF PROCEEDINGS — SERVICE OF ORDER OR AWARD. — A decision of the commission together with the transcript of the evidence, findings of fact, rulings of law, award or order, and any other matter pertinent to the questions arising during the hearing shall be filed in the office of the commission. A copy of the decision shall be immediately sent to the parties by United States mail.

72-717. EFFECT OF DECISION BY ONE MEMBER OR ASSIGNED OFFICER — CLAIM FOR REVIEW. — If the matter has been assigned for hearing by a member, hearing officer, referee, or examiner, the record of such hearing, together with the recommended findings and determination, shall be submitted to the commission for its review and decision.

72-718. FINALITY OF COMMISSION'S DECISION. — A decision of the commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated by the commission upon the expiration of the 30th day after filing the decision in the office of the commission, unless prior to that day (1) the commission on its own motion or that of a party in interest,
and after notice to all parties in interest, shall signify that it will reconsider the decision, or (2) a party in interest shall seek judicial review by appeal.

The decision of the commission upon reconsideration of the case, in the absence of fraud and except as provided in section 72-719, shall become final as to all matters considered, upon expiration of the 30th day after filing the decision in the office of the commission, and mailing a copy to the interested parties unless prior to that day a party in interest shall seek judicial review by appeal.

72-719. MODIFICATION OF AWARDS AND AGREEMENTS — GROUNDS — TIME WITHIN WHICH MADE. — (1) On application made by a party in interest filed with the commission at any time within five (5) years of the date of the accident causing the injury or date of first manifestation of an occupational disease, on the ground of a change in conditions, the commission may, but not oftener than once in six (6) months, review any order, agreement or award upon any of the following grounds:

(a) Change in the nature or extent of the employee’s injury or disablement; or

(b) Fraud.

(2) The commission on such review may make an award ending, diminishing or increasing the compensation previously agreed upon or awarded, subject to the maximum and minimum provided in this law, and shall make its findings of fact, rulings of law and order or award, file the same in the office of the commission, and immediately send a copy thereof to the parties.

(3) The commission, on its own motion at any time within five (5) years of the date of the accident causing the injury or date of first manifestation of an occupational disease, may review a case in order to correct a manifest injustice.

(4) This section shall not apply to a commutation of payments under section 72-404.

72-720. POWERS OF COMMISSION — SAFETY. — The commission is empowered, whenever it has information that any employer subject to the provisions of this act is employing workmen in or about any structure, room or place of employment which is not constructed and maintained in conformity with reasonable standards of construction as shall render it safe, or is employing workmen on, or with, tools, equipment or machinery which are not equipped with safety devices, safeguards or other means of
protection well adapted to render employees and places of employment safe, 
to compel such employer to cease employing workmen in such places, or on, 
or with, such tools, appliances or machinery, and to adopt reasonable 
minimum safety standards, and to make inspection in and about any place 
where workmen are employed.

72-721. RULES FOR SAFETY – PROTECTIVE APPLIANCES. – 
The commission is empowered to require all employers to adopt rules which 
have been approved by it for the protection and safety of employees and for 
preventing the contraction of occupational diseases; to require all employers 
to keep such rules posted in conspicuous places in and about the premises; 
and to require employers to install, use or adopt such protective or safety 
appliances as the commission may deem necessary for the protection of the 
employees.

72-722. PROCEDURE – WARNING ORDER – SAFETY 
INSPECTION – HEARING – DECISION. – (1) The commission is 
empowered, whenever it has information that employees are employed in or 
about places, or on, or with, tools, equipment or machinery which are not 
constructed or equipped to properly protect life, health and safety of the 
employees, or which do not conform to minimum safety standards adopted 
by the commission, to immediately notify, by United States mail, the owner 
or lessee of the premises or the proprietor or operator of the business there 
carried on, of the fact that it has such information and to require such 
owner, lessee, proprietor or operator to immediately render such places of 
employment safe, or to equip with proper safety devices, safeguards or other 
means or methods of protection, such tools, equipment or machines so as to 
render his employees and the place of employment safe, or to cease 
employing workmen in or about such places or on or about such tools, 
equipment or machinery.

(2) Upon receiving such notice from the commission, such owner, 
lessee, proprietor or operator shall immediately conform to the order of the 
commission or shall notify the commission that he claims he is not operating 
in violation of such order.

(3) Upon receiving such information from such owner, lessee, 
proprietor or operator, the commission shall, unless such information was 
obtained by inspection by the commission, inspect or cause to be inspected, 
said place of employment or tools, equipment or machinery, and if upon 
such inspection the commission is of the opinion that the place of 
employment is not unsafe or that the tools, equipment or machinery have
proper safety devices, safeguards or other means or methods of protection which are well adapted to render the employees and places of employment safe, it shall so notify the owner.

(4) If after such inspection the commission is of the opinion that the place of employment is not constructed or maintained to render it reasonably safe or that the tools, equipment or machines are not equipped with proper safety devices, safeguards or other means or methods of protection which are well adapted to render the employees and places of employment safe, it shall designate a time and place for hearing and may assign the matter for hearing by a member of the commission, or a hearing officer, referee or examiner.

(5) The commission or the officer to whom the matter is assigned for hearing shall make such inquiry and investigation as shall be deemed necessary. The hearing may be held in the city or town within the county where such places of employment are situated or such other place as the commission deems most convenient for the parties and most appropriate for ascertaining their rights.

(6) Thereafter, the applicable procedure shall be as set forth in sections 72-714 to 72-718, inclusive.

72-723. VIOLATION OF SAFETY ORDER A MISDEMEANOR. — Every employer, employee or other person who, either individually or acting as an officer, agent or employee of a corporation or other person, violates any decision or order of the commission made after the hearing provided in the foregoing section, or who shall fail or refuse to comply with such order, or part thereof, or who, directly or indirectly, knowingly induces another to do so, is guilty of a misdemeanor.

Every such person shall also be liable to a penalty of one dollar ($1) for each employee for every day during which such failure continues, to be recovered in an action brought by the commission in the name of the state of Idaho, and the amount so collected shall be paid into the industrial administration fund, and for this purpose the district court in the county in which such employer carries on any part of his trade or occupation shall have jurisdiction.

If any employer shall fail for a period of ten (10) days to comply with such order of the commission, he may be enjoined by such district court from carrying on such trade or occupation while such failure continues.

All proceedings in the courts under this section shall be brought by the commission in the name of the state of Idaho.
72-724. APPEAL TO SUPREME COURT. — (1) The supreme court shall have jurisdiction to review upon appeal any order of the industrial commission.

(2) On appeal from orders of the commission the court shall be limited to a review of questions of law.

(3) The court shall dispose of all appeals of matters arising under this law before considering any civil causes or actions.

72-725. TIME FOR APPEAL. — Within thirty (30) days after a final order or award of the commission has been filed as provided in section 72-718, any party affected thereby may appeal to the supreme court to review such order or award.

72-726. NOTICE OF APPEAL. — Such appeal shall be taken by filing in the supreme court a notice of appeal and serving a copy of the same on the secretary of the commission and a copy on the adverse party or his attorney. Such notice shall briefly describe such order or award and state the intention of the party to appeal therefrom.

72-727. PRAECIPE. — At the time of serving the notice of appeal on the secretary of the commission, or within five (5) days thereafter, the appellant may file with the secretary of the commission a praecipe on appeal, specifying such records, proceedings, transcript of stenographic or machine report of the testimony introduced at the hearing, and such files and exhibits as he desires to have certified to the supreme court, for consideration on appeal.

72-728. TRANSCRIPT ON APPEAL — PERFECTION OF APPEAL — TIME OF HEARING APPEAL. — (1) Within twenty (20) days after service of the notice of appeal on the secretary of the commission, the secretary shall certify three (3) copies of its records, proceedings, transcript of the stenographic or machine report of the testimony introduced at the hearing, if a hearing was had, or three (3) copies of a transcript of the agreement or stipulation of the parties if the award is based thereon in whole or in part, to the court, together with such files and exhibits as the appellant may desire to have certified to the court.

(2) The appeal shall be perfected when such records, proceedings and transcript shall have been filed with the clerk of the supreme court.

72-729. TRANSCRIPT FEE. — The party so appealing to the supreme court, at the time of serving a copy of the notice of appeal on the secretary of the commission, shall pay to the commission the sum of ten dollars ($10) to be designated a transcript fee, which shall be paid into the state treasury to be deposited in the industrial administration fund.
72-730. COPIES OF TRANSCRIPT FOR PARTIES. - In addition to preparing and filing in the supreme court the copies of the records, proceedings and transcript, the secretary of the commission shall cause to be prepared two (2) further and additional copies of such records, proceedings and transcript and shall transmit and deliver one (1) such copy to the appellant and the other to the adversary party at the same time as the record of proceedings before the commission is filed in the supreme court.

72-731. STAY ON APPEAL. - An appeal to the supreme court shall automatically operate as a supersedeas or stay of the award, order or decision being disputed on the appeal unless the commission shall otherwise order.

72-732. DISPOSITION OF APPEAL — JURISDICTION OF SUPREME COURT. — Upon hearing the court may affirm or set aside such order or award, or may set it aside only upon any of the following grounds:

(1) The commission's findings of fact are not based on any substantial competent evidence;

(2) The commission has acted without jurisdiction or in excess of its powers;

(3) The findings of fact, order or award were procured by fraud;

(4) The findings of fact do not as a matter of law support the order or award.

72-733. LIMITED JURISDICTION OF COURTS. — Except as herein provided, no court of this state shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend or annul any order or award of the commission, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its duties.

72-734. INTEREST PENDING APPEAL. — Whenever an appeal shall be taken from a decision of the commission, the employer shall become liable for, and shall pay, interest from the date of such decision at the rate of six percent (6%) per annum on all compensation then due and payable, and on all compensation successively becoming due thereafter from the respective due dates, until the time of payment thereof.

72-735. ENFORCEMENT OF AWARD — FILING IN DISTRICT COURT — DUTY OF COURT TO ENTER JUDGMENT. — (1) In the event of default in payment of compensation due under an award and on or after the 30th day from the date upon which compensation became due, any party in interest may file in the district court for the county in which the
injury or disease occurred if such occurred within the state, otherwise in the
district court for the county in which the employer resides, a certified copy
of the decision of the commission awarding compensation from which no
appeal has been taken within the time allowed therefor, or a certified copy
of the memorandum of agreement approved by the commission, and
thereupon the court without notice shall render a decree or judgment in
accordance therewith and cause the parties to be notified thereof.

(2) In case the employer maintains no place of business in this state, he
shall be deemed to have appointed the secretary of state his agent for the
purpose of acceptance of notice of entry of such decree or judgment and the
secretary of state shall take reasonable steps to give actual notice thereof to
the employer.

(3) The fee required to be paid to the clerk of the district court for the
filing of the petition or entry of such decree or judgment and for any
enforcement procedure thereupon shall be the same as that provided by law
for appeals to the district court from inferior tribunals.

72-736. DISTRICT COURT JUDGMENT NONAPPEALABLE — A
LIEN UPON EXECUTION. — The decree or judgment from the district
court entered pursuant to section 72-735, shall have the same effect, and all
proceedings in relation thereto shall thereafter be the same as though said
decree or judgment had been rendered in an action duly heard and
determined by said court, and shall with like effect be entered and docketed,
except that there shall be no appeal therefrom and the same shall not
constitute a lien upon the real property of the employer until recorded as any
other judgment.

72-737. REVISION OF DISTRICT COURT'S JUDGMENT UPON
MODIFICATION OF AWARD BY COMMISSION. — The district court,
upon the filing with it of a certified copy of a decision of the commission
ending, diminishing or increasing compensation previously awarded, shall
revoke or modify its prior decree or judgment so it will conform to said
decision.

CHAPTER 8
MISCELLANEOUS PROVISIONS

72-801. FALSE REPRESENTATION A MISDEMEANOR —
FORFEITURE OF COMPENSATION. — If, for the purpose of obtaining
any benefit or payment under the provisions of this law, either for himself or
for any other person, any one willfully makes a false statement or
representation, he shall be guilty of a misdemeanor and upon conviction for
such offense he shall forfeit all right to compensation under this law.

72-802. COMPENSATION NOT ASSIGNABLE — EXEMPT FROM EXECUTION. — No claims for compensation under this law shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

72-803. CLAIMS OF ATTORNEYS AND PHYSICIANS AND FOR MEDICAL AND RELATED SERVICES — APPROVAL. — Claims of attorneys and claims for medical services and for medicine and related benefits shall be subject to approval by the commission.

72-804. ATTORNEY’S FEES — PUNITIVE COSTS IN CERTAIN CASES. — If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

72-805. LAW NOT RETROACTIVE. — The provisions of this law shall not apply to injuries received and occupational diseases manifested or to the compensation payable therefor prior to the taking effect of this law, except as in this law otherwise provided.

SECTION 4. If any provision of this law is declared to be unconstitutional, the same shall not affect the validity of the remainder of the law, or any part thereof which can be given effect without the part so decided to be unconstitutional.

SECTION 5. This law shall be in full force and effect on and after January 1, 1972.

Approved March 16, 1971.
AN ACT

RELATING TO PARKS, CREATING THE IDAHO VETERANS MEMORIAL PARK; PROVIDING FOR THE ADMINISTRATION THEREOF; PROVIDING FOR THE EXERCISE OF EMINENT DOMAIN; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby created a state park to be known and designated as the Idaho Veterans Memorial Park, located in Ada County and particularly described as follows:

All that lot, piece or parcel of land situate lying and being in the SE¼ of Section 32, T. 4 N., R. 2 E., B.M., Ada County, Idaho, bounded as follows:

Beginning at a point in the Valley Road distant North 1°50' West 1,870 feet from the Section corner to Sections 32 and 33, T. 4 N., R. 2 E., and Sections 4 and 5, T. 3 N., R. 2 E., which point is a flat iron bar firmly driven in the ground and distant North from the fence of H. T. West 34 feet, said fence being on the South side of the said Valley Road. From this point said boundary line runs South 33°50' West on a center line of a row of Poplar trees 826 feet; thence South 46°35' East 14.60 feet; thence South 33°50' West 840 feet to a point on the North bank of the Boise River; thence North 46°35' West 14.60 feet along said river; thence North 57°45' West 186 feet along said river; thence North 72°55' West 260 feet along said river; thence South 89°45' West 96 feet along said river; thence South 63°27' West 154 feet along said river to a point on said Bar 10 feet distant from South bank of Ditch, coming out of Boise River; thence North 70°36' West 288 feet along said Sand Bar; thence North 59°50' West 220 feet along said Sand Bar; thence North 43°05' East 2169 feet to a point on the Valley Road distant 32.50 feet North of said H. T. West fence and indicated by an iron pipe 1½ inches in diameter driven firmly in the ground; thence South 46°55' East 756 feet to a point or place of beginning.

EXCEPT ditches, laterals, and public roads. ALSO EXCEPTING Boise Central Railway Co. Right-of-Way, as disclosed in deed recorded in Book 26 of Deeds at page 139, records of Ada County, Idaho.

SECTION 2. From and after the effective date of this act, control, management and administration of the Idaho Veterans Memorial Park shall
be vested in the Idaho state parks board. The Idaho Veterans Memorial Park shall be maintained as a state park for the use of all the people, and no part, parcel or interest therein shall be alienated without the consent of the legislature.

SECTION 3. The legislature hereby declares that the highest and best use of the property described in section 1 of this act is as a state park. The Idaho state parks board may, in its sound discretion, exercise the power of eminent domain to condemn any uses or interests in said property which are or may be inconsistent with the purposes of this act.

SECTION 4. 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 March 16, 1971.
FROM THE SLAYED PERSON BY VIRTUE OF DEVISE OR DESCENT; AMENDING 15-3-301 THEREOF BY PROVIDING FOR APPLICATIONS FOR INFORMAL STATEMENTS OF INTESTACY WHERE THE ESTATE IS COMMUNITY AND THERE IS A SURVIVING SPOUSE AND ADDING TWO REQUIREMENTS FOR THE CONTENTS OF THE PETITION; AMENDING 15-3-302 THEREOF BY PROVIDING THAT THE REGISTRAR SHALL ISSUE A WRITTEN STATEMENT UNDER INFORMAL PROBATE OF A WILL IF THIRTY DAYS HAVE ELAPSED SINCE DEATH; AMENDING 15-3-303 THEREOF BY REQUIRING THE REGISTRAR, IN THE CASE OF INFORMAL PROBATE OF A WILL WHEN THE ESTATE IS COMMUNITY AND THERE IS A SURVIVING SPOUSE, TO MAKE CERTAIN DETERMINATIONS; AMENDING 15-3-706 THEREOF BY PROVIDING MAILING OF AN INVENTORY TO INTERESTED PERSONS WHO REQUEST IT; AMENDING 15-3-803 THEREOF TO LIMIT APPLICATION OF THE NON-CLAIM STATUTE TO CONTRACT CLAIMS; AMENDING 15-5-303 TO STRIKE REFERENCE TO AN "APPROPRIATE OFFICIAL"; AMENDING 15-5-410 THEREOF BY CHANGING THE ORDER OF WHO MAY BE APPOINTED CONSERVATOR OF THE ESTATE OF A PROTECTED PERSON; AMENDING 15-6-104 TO CHANGE BURDEN OF PROOF OF GIFT ON JOINT BANK ACCOUNTS; AMENDING SECTION 28 OF THE PRINTED BILL TO PROVIDE THAT THE "AUGMENTED ESTATE" PROVISIONS SHALL APPLY ONLY TO COUPLES MARRIED AFTER JULY 1, 1972 OR BECOMING STATE DOMICILIARIES AFTER SUCH DATE.

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

SECTION 1. That Section 1 of Senate Bill No. 1050, First Regular Session of the Forty-first Idaho Legislature, be, and the same is hereby amended by amending the subsections set out below to read as follows:

15-1-201. GENERAL DEFINITIONS. — Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or chapters, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under chapter 3 of article III of this code.
(2) "Augmented estate" means the estate described in section 15-2-202 of this code.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(4) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(5) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(6) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(9) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(10) "Disability" means cause for a protective order as described by subsection (1) of section 15-5-401 of this code.

(11) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative.
(12) "Emancipated minor" shall mean any male or female who has been married.

(13) "Estate" means all of the property of the decedent, trust, or other person whose affairs are subject to this code as it exists from time to time during administration.

(14) "Exempt property" means that property of a decedent's estate which is described in section 15-2-402 of this code.

(15) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(16) "Foreign personal representative" means a personal representative of another jurisdiction.

(17) "Formal proceedings" mean those conducted before a judge with notice to interested persons.

(18) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(19) "Heirs" mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(20) "Incapacitated person" is as defined in section 15-5-101 of this code.

(21) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(22) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(23) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(24) "Lease" includes an oil, gas, or other mineral lease.

(25) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
(26) "Minor" means a male under twenty-one (21) years of age or a female under eighteen (18) years of age.

(27) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(28) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(29) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(30) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(31) "Person" means an individual, a corporation, an organization, or other legal entity.

(32) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(33) "Petition" means a written request to the court for an order after notice.

(34) "Proceeding" includes action at law and suit in equity.

(35) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(36) "Protected person" is as defined in section 15-5-101 of this code.

(37) "Protective proceeding" is as defined in section 15-5-101 of this code.

(38) "Registrar" refers to the clerk of the district court, or the deputy clerk designated by the clerk, magistrates or judges of the district court who shall perform the functions of registrar as provided in section 15-1-307 of this code.

(39) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or
interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(40) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(41) "Special administrator" means a personal representative as described by sections 15-3-614 through 15-3-618 of this code.

(42) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(43) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(44) "Successors" mean those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(45) "Supervised administration" refers to the proceedings described in chapter 5, article III, of this code.

(46) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(47) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in article VI of this code, custodial arrangements pursuant to chapter 8, title 68, Idaho Code, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(48) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(49) "Ward" is as defined in section 15-5-101 of this code.

(50) "Will" is a testamentary instrument and includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(51) "Separate property" includes all property of either the husband or the wife owned by him or her before marriage, and that acquired
afterward either by gift, bequest, devise or descent, or that which either he or she acquires with proceeds of his or her separate property, by way of monies or other property.

(52) "Community property" includes all other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by the instrument by which any such property is acquired by the wife, it is provided that the rents and profits thereof be applied to her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee.

15-1-307. REGISTRAR — POWERS. — The acts and orders which this code specifies as performable by the registrar may be performed by the clerk of the court or the deputy clerk designated by the clerk to perform the duties herein assigned to registrar. will be performed by a magistrate or district judge.

15-2-401. HOMESTEAD ALLOWANCE. — If no homestead has been selected during life and set aside, a surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of five thousand dollars ($5,000), four thousand dollars ($4,000) or ten thousand dollars ($10,000) if there are dependent issue living with the surviving spouse. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to five thousand dollars ($5,000), ten thousand dollars ($10,000) divided by the number of minor and dependent children of the decedent if the same condition exists. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

15-2-403. FAMILY ALLOWANCE. — In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse or the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if
living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

15-2-505. WHO MAY WITNESS. – (a) Any person eighteen (18) or more years of age generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

15-2-803. EFFECT OF HOMICIDE ON DISTRIBUTION AT DEATH. –

(a) (1) "Slayer" shall mean any person who participates, either as principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.
(2) "Decedent" shall mean any person whose life is so taken.
(3) "Property" shall include any real and personal property and any right or interest therein.

(b) No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.

(c) The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent.

(d) Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

(e) One half (1/2) of any community property which would have passed to or for the benefit of the slayer by devise, legacy or intestate
succession from the decedent shall be distributed as if he had predeceased the decedent.

(f) Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

(g) Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

(h) As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.

(2) In any case the interest shall not be vested or increased during period of the life expectancy of the decedent.

(i) (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer.

(j) (1) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary
beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

(k) Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer.

(l) The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice, property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

(m) The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

(n) This section shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed.

15-3-301. INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS — APPLICATION — CONTENTS. — Applications for informal probate, informal statement of intestacy where the estate is community and there is a surviving spouse, or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(a) Every application for informal probate of a will, informal statement
of intestacy where the estate is community and there is a surviving spouse, or for informal appointment of a personal representative, other than a special, ancillary or successor representative, shall contain the following:

1. a statement of the interest of the applicant;
2. the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
3. if the decedent was not domiciled in the state at the time of his death, a statement showing venue;
4. a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
5. a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere;
6. A statement that an estimate of total assets of the estate has been sent to the state tax commission;
7. If the application is for an informal statement of intestacy of a community estate where there is a surviving spouse, an affidavit of the surviving spouse or someone acting on behalf of the surviving spouse that there is no will, that the decedent's estate consists solely of community property of the decedent and surviving spouse, that he or she is the surviving spouse, and a request for a statement that there is no will, that all assets are community and that the surviving spouse is the sole heir.

(b) An application for informal probate of a will shall state the following in addition to the statements required by subsection (a) of this section:

1. that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
2. that the applicant, to the best of his knowledge, believes the will to have been validly executed;
3. that after the exercise of reasonable diligence, the applicant is
unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(4) that the time limit for informal probate as provided in this article has not expired either because three (3) years or less have passed since the decedent's death, or, if more than three (3) years from death have passed, that circumstances as described by section 15-3-108 of this code authorizing tardy probate have occurred.

(c) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(d) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by subsection (a) of this section:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 15-1-301 of this code, or, a statement why any such instrument of which he may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 15-3-203 of this code.

(e) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(f) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection (c) of section 15-3-610 of this code, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and
address of the person who seeks appointment as successor, and describe the priority of the applicant.

15-3-302. INFORMAL PROBATE — DUTY OF REGISTRAR — EFFECT OF INFORMAL PROBATE. — Upon receipt of an application requesting informal probate of a will or informal statement of intestacy, the registrar, upon making the findings required by section 15-3-303 of this chapter shall issue a written statement of informal probate if at least one hundred twenty (120) hours thirty (30) days have elapsed since the decedent’s death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

15-3-303. INFORMAL PROBATE — PROOF AND FINDINGS REQUIRED. — (a) In an informal proceeding for original probate of a will or informal statement of intestacy where the estate is community and there is a surviving spouse, the registrar shall determine whether:

(1) the application is complete;
(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
(3) the applicant appears from the application to be an interested person as defined in subsection (22) of section 15-1-201 of this code;
(4) on the basis of the statements in the application, venue is proper;
(5) an original, duly executed and apparently unrevoked will is in the registrar’s possession;
(6) any notice required by section 15-3-204 of this code has been given and that the application is not within section 15-3-304 of this chapter; and
(7) it appears from the application that the time limit for original probate has not expired;

(b) if the application is for a statement of intestacy of a community estate with a surviving spouse, on the basis of statements in the application and affidavit: 1. the decedent left no will, 2. the decedent’s estate consists solely of community property of the decedent and the surviving spouse, and 3. the decedent left a surviving spouse. In addition to this, the registrar shall set out the name of the surviving spouse.

(b) The application shall be denied if it indicates that a personal
representative has been appointed in another county of this state or except as provided in subsection (d) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 15-2-502, 15-2-503 or 15-2-506 of this code have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) of this section, may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

15-3-706. DUTY OF PERSONAL REPRESENTATIVE INVENTORY AND APPRAISAL. — Within three (3) months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to heirs, devisees and to interested persons who request it, or he may file the original of the inventory with the court.

15-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS. — (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated,
founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representatives, and the heirs and devisees of the decedent, unless presented as follows:

1. within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 15-3-801 of this chapter; provided, claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.

2. within three (3) years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

1. a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

2. any other claim, within four (4) months after it arises.

(c) Nothing in this section affects or prevents any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

2. to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

15-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor
shall also interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

15-5-410. WHO MAY BE APPOINTED CONSERVATOR — PRIORITIES. — (a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(2) an individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(3) the spouse of the protected person;

(4) an adult child of the protected person;

(5) a conservator, guardian of property or other like fiduciary (but not a fiduciary serving only as a trustee) appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(6) any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;

(7) a person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (1), (2), (3), (4), (5), or (6) of subsection (a) of this section may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.
15-6-104. RIGHT OF SURVIVORSHIP. — (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created or an attempt to give the account can be shown by the surviving party or parties. If there are two (2) or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 15-6-103 of this chapter augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two (2) or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one (1) or more die before the original payee; if two (2) or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two (2) or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one (1) or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if two (2) or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this section, if an attempt to give can be shown, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

SECTION 2. That Section 28 of Senate Bill No. 1050, First Regular Session of the Forty-first Idaho Legislature, be, and the same is hereby amended to read as follows:

SECTION 28. TIME OF TAKING EFFECT — PROVISIONS FOR TRANSITION. — (a) This code shall be in full force and effect on and after July 1, 1972.
(b) Except as provided elsewhere in this code, on the effective date of this code:

1. The code applies to any wills of decedents dying thereafter;
2. The code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;
3. Every personal representative including a person administering an estate or having been judicially assigned custody of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;
4. An act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;
5. Any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.
6. The surviving spouse’s election to take a share in the “augmented estate” established by sections 15-2-201 through 15-2-207 of section 1 shall be limited in application to surviving spouses of marriages contracted by domiciliaries of this state on or after July 1, 1972, and to surviving spouses of couples who become domiciliaries of this state on or after July 1, 1972; provided, however, that any married couple may, by written agreement made at any time during marriage, agree to application of such election to their marriage and such agreement, absent fraud or duress, shall not be subject to rescission except by mutual consent.

Approved March 16, 1971.
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CHAPTER 127
(S. B. No. 1111)

AN ACT
RELATING TO JUNIOR COLLEGES; AMENDING SECTION 33-2110, IDAHO CODE, BY PROVIDING FOR AN INCREASE IN THE AMOUNT OF TUITION; AMENDING SECTION 33-2110A, IDAHO CODE, BY INCREASING THE LIABILITY OF THE RESIDENT COUNTY.

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

SECTION 1. That Section 33-2110, Idaho Code, be, and the same is hereby amended to read as follows:

33-2110. TUITION. — All students of a junior college shall pay tuition that shall be fixed annually by the board of trustees not later than the 1st day of August of each year. The tuition for full time students taking normal academic courses provided by the college, who are residents of the district, shall be fixed at not less than $62.50, nor more than $125 per annum; for all other students taking such courses the tuition shall be, as nearly as is practicable, the annual costs of all elements of providing such courses of instruction, including interest on general obligation bonds, teaching, administration, maintenance, operation and depreciation of equipment and buildings, supplies and fuel, and other ordinary and necessary expenses of operation incurred in providing such courses by the junior college, provided that the tuition of students residing outside the district but within the county or counties wherein such district is located shall be fixed after taking into account moneys received by the junior college district from the allocation of the liquor act control fund, and any funds allocated to such junior college from the educational funds of the state of Idaho, other than allocations for vocational education; and provided that the tuition of students residing outside the district and the county but within the state of Idaho shall be fixed after taking into account moneys received from educational funds other than vocational moneys, as referred to in this chapter, from the state of Idaho. Receipt of moneys, as hereinbefore provided in this section, shall be based upon the receipts from the sources referred to during the fiscal year preceding the fixing of said tuition. A student in a junior college shall not be deemed a resident of the district or of the county or of the state of Idaho, unless such student shall have resided
within said district, county or state, for at least six (6) months continuously prior to the date of his first enrollment in said junior college, and no student who was not a resident of the district, county or state shall gain residence while attending and enrolled in said junior college. The residence of a minor shall be deemed to be the residence of his parents or parent or guardian. Tuition shall be payable in advance, but the board may, in its discretion, permit the same to be paid in instalments. The board of trustees shall also fix fees for laboratory and other special services provided by said junior college and for special courses, including, but not limited to, night school, off-campus courses, summer school, vocational courses, as otherwise provided in this chapter, and other special instruction provided by said junior college and nothing in this act shall be deemed to control the amount of such tuition for said special courses or such fees for special services, as herein provided, but the same shall be, as nearly as reasonable, sufficient to cover the cost of all elements of providing such courses as above defined.

SECTION 2. That Section 33-2110A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2110A. TUITION OF OUT OF DISTRICT IDAHO STUDENTS, COUNTY TAXES AND OTHER FINANCIAL SUPPORT. — Any student residing in the area of a county outside of a junior college district or in a county without a junior college district, who has been a resident of the county and state for not less than six (6) months continuously prior to the date of his first enrollment in a junior college, which residence may not be acquired while attending and enrolled in a junior college above the twelfth grade, may enroll in any junior college in the state, and the county of his residence shall pay that portion of his tuition as hereinafter set out. Provided, however, no student residing in a junior college area which has a junior college district may attend another junior college in the state, with the county of his residence paying a portion of the tuition, unless the student, if he be of legal age, or the parent or guardian of such student makes application to the board of trustees of the junior college district of the junior college area in which such student resides, which application shall request the attendance of such student at another junior college in the state, with the county of his residence paying a portion of the tuition, and shall set forth the facts and reasons why such attendance should be authorized and, further, shall specify the junior college at which attendance is desired. Such board of trustees shall, not less than ten (10) days before the date such application is to be heard, enter its order for a hearing and give notice by
mail to the applicant as to the time and place thereof. After hearing the same, if the board of trustees shall determine it to be in the best interest of such student to attend another junior college, with the county of his residence paying a portion of the tuition, and if the other junior college has agreed to accept such student, the board shall make and enter its order to that effect. Any such decision by the board of trustees of the junior college district may be appealed to and heard by the state board of education. The tuition which shall be paid by the resident county shall be that portion of the tuition uniformly established by a junior college district for all out of district students, both in state as well as out of state, pursuant to section 33-2110, Idaho Code, after deducting therefrom the amount of tuition paid by a resident student at such junior college; however, the liability of the resident county shall not exceed two-thirds (2/3) the total tuition charged and in no instance shall it exceed $312.50 (three hundred twelve dollars and fifty cents) each semester for a two-semester year for a full-time student. The student shall pay the tuition and fees charged a student resident in the district, and the balance, if any, of the nonresident student tuition above the maximum liability of the county of his residence. No county shall be liable for such out of district tuition unless the board of county commissioners of such county has first verified to the junior college in writing the fact that such student is a resident of such county. The verification shall be made to the college not less than ten (10) days prior to the first day of enrollment.

The nonresident tuition shall be established annually not later than August 1st and shall be forthwith filed with the state board of education, together with a statement supporting the computation thereof. Each junior college, by September 30 and March 1 of each year, shall bill the county of residence of each nonresident student enrolled at the commencement of each semester, and each board of county commissioners shall allow and order paid any such bill for tuition at the first regular meeting following receipt of said bill, but not exceeding forty-five (45) days after receipt. Upon failure of a county to pay such tuition, a junior college district may commence action in the district court of the state of Idaho for said county to collect the same.

For the payment of tuition of nonresident students as herein provided, there shall be allocated in each county without a junior college district to a county junior college fund, and paid to the county treasurer to be held in such fund, fifty percent (50%) of all moneys apportioned to the
county (before the deduction of amounts, if any, allocated therefrom to cities and villages) out of liquor funds of the state of Idaho as set forth in chapter 4, title 23, Idaho Code, and said amount shall be deducted from the amount that would otherwise be allocated to such county; provided, where an allocation in a county with an existing junior college is made pursuant to section 33-2111, Idaho Code, the maximum liability of the county for tuition for out of district but in county students shall be reduced by proportioning the said liquor fund over all students of the county attending the junior college in the county; and if such liquor funds are not sufficient to pay said tuition, commencing for the calendar year 1966, the board of county commissioners shall levy upon the taxable property within each county without a junior college district, and, in a county with such a district, upon the taxable property within the county lying outside of the junior college district, a tax not to exceed thirty cents (30¢) on each one hundred dollars ($100) of assessed value, to be certified as set out in section 33-2111, Idaho Code. The proceeds of such levy shall likewise be placed in the county junior college fund. Apportionment of liquor funds herein provided shall commence for the fiscal quarter ending September 30, 1965, and accruing during such quarter.

Based upon the enrollment established by the first semester's tuition bills received by September 30th, the board of county commissioners shall establish immediately a total junior college annual tuition budget for two (2) semesters which shall be equal to twice the amount of the tuition bills plus a contingency factor of ten per cent (10%). This budget shall be adjusted after March 1st based on any change of enrollment shown by the second semester tuition bills. If enrollment is from none to not more than four (4) students, a minimum budget of five (5) students at $500.00 five hundred dollars ($500) each shall be established. In the event all tuition bills received have been paid, notwithstanding any other provision hereof, (a) any liquor funds received, which in the quarter when received to any extent are in excess of said budget, to the extent of such excess shall not be paid over to the county treasurer to be held in the junior college fund, and (b) any funds received from the levy on taxable property, which when received to any extent are in excess of said budget after the application of liquor funds thereto, to the extent of such excess shall not be paid over to the junior college fund. Said excess liquor funds shall be paid pursuant to law as if this section were not applicable thereto, and said excess funds shall be paid to the general fund of the county. In the event the total liquor fund
payable hereunder to the county junior college fund together with the receipts from the levy on taxable property for each fiscal year are insufficient to pay tuition bills, which deficiency is caused by a levy of less than the maximum allowed hereunder, or by enrollment in excess of the budget herein provided, the budget for each following year shall be increased to the maximum allowed by the maximum tax levy authorized herein to pay any deficiency at the earliest time. If said deficiency is due to the lack of funds in a fiscal year when the maximum levy authorized hereunder shall have been made, for the next fiscal year thereafter the number of students from such county shall be limited by the board of county commissioners to the extent necessary to pay such deficiency not later than the end of the following year. Provided nevertheless, for the two (2) semesters commencing September, 1965 the board of county commissioners shall limit the junior college budget and total students to estimated liquor funds available on quarterly disbursements through June 30, 1966. Any limitation of students authorized herein shall be accomplished (a) on the basis of student grades and financial need, and (b) by each junior college notifying the county of residence of each student’s application and such county shall accept or reject the application at least five (5) days prior to the tuition billing dates set out herein. A junior college shall nevertheless have a right to require any student residing outside the district to pay nonresident tuition if the county of his residence is more than twenty-five per cent (25%) in arrears of a total county tuition bill for one (1) year as of the beginning of the subsequent semester, but such tuition shall be refunded to such students when paid by the county.

Approved March 16, 1971.

CHAPTER 128
(S. B. No. 1139)

AN ACT
AMENDING CHAPTER 9, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION, 59-904A, IDAHO CODE, TO PROVIDE THAT VACANCIES IN EITHER HOUSE OF THE LEGISLATURE BE FILLED BY APPOINTMENT OF THE GOVERNOR FROM A LIST SUPPLIED BY LEGISLATIVE DISTRICT COMMITTEE; AND DECLARING AN EMERGENCY.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 9, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-904A, Idaho Code, and to read as follows:

59-904A. LEGISLATURE — VACANCIES, HOW FILLED. — In the event of a vacancy in the house of representatives or senate of the state of Idaho, such vacancy shall be filled as herein provided. The legislative district committee of the same political party, if any, of the former member whose seat is vacant shall submit, within fifteen (15) days, a list of three (3) nominations to the governor. The governor shall fill the vacancy by appointment from the list of three (3) nominations within fifteen (15) days. If no appointment has been made within fifteen (15) days, the legislative district committee shall designate one (1) of the three (3) nominees to fill the vacancy. The vacancy shall be so filled until the next general election after such vacancy occurs, when such vacancy shall be filled by election.

The legislative district committee of the same political party, if any, of the former member, shall select a person who possesses the constitutional qualifications to fill the vacant office to which he is nominated, and who is affiliated with the same political party, if any, as the former member whose seat is vacant. Upon the failure of the committee to make such selection before the expiration of the fifteen (15) day period, the governor shall within five (5) days, fill said vacancy by appointing a person having the qualifications above set forth.

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 March 16, 1971.

CHAPTER 129
(S. B. No. 1186)

AN ACT
AMENDING SECTION 34-1107, IDAHO CODE, RELATING TO THE MANNER OF VOTING BY PROVIDING THAT THE ELECTOR SHALL HAND HIS BALLOT TO THE ELECTION JUDGE AND REQUIRING THE JUDGE TO WRITE THE ELECTOR'S NAME IN
THE POLL BOOK AND DEPOSIT THE BALLOT IN THE PROPER BOX; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-1107, Idaho Code, be, and the same is hereby amended to read as follows:

34-1107. MANNER OF VOTING. — On receipt of his ballot the elector shall retire to a vacant voting booth and mark his ballot according to the instructions provided by law. Before leaving the voting compartment the elector shall fold his ticket so that the official stamp is visible and the face of the ballot is completely inclosed.

After marking his ballot, the elector shall present himself to the judge in charge of the poll book and state his name and residence. The elector shall hand his ballot to the election judge. The judge shall mark or write the elector's name in the poll book and deposit his ballot in the proper box after ascertaining that the ballot is folded correctly.

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 March 16, 1971.

CHAPTER 130
(S. B. No. 1187)

AN ACT
AMENDING SECTION 34-501, IDAHO CODE, RELATING TO THE DEFINITION OF POLITICAL PARTIES, BY PROVIDING A NEW DEFINITION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-501, Idaho Code, be, and the same is hereby amended to read as follows:

34-501. “POLITICAL PARTY” DEFINED — PROCEDURES FOR CREATION OF A POLITICAL PARTY. — (1) A “political party” within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in either any or all of the ways:

(a) By having three (3) or more candidates for state or national
office listed under the party name at the last general election, or

(2) (b) By presenting and filing a petition with the secretary of state signed by qualified electors equal in number to ten per cent (10%) of the total vote cast for the office of governor at the last gubernatorial election. Such indorsers of the petition need not necessarily be representatives or members of the group or party whose petition they indorse. Such petition shall declare that the signers indorse the doctrines of the party or group, the name of which shall be stated, and that they desire to participate and elect officers and nominate candidates by a state convention of all members of the party who wish to participate in such convention. The party or group may after filing a qualified petition proceed to hold a state convention in the manner and at the time provided by law, provided that at the initial convention of any such newly organized political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nomination of candidates. Thereafter, the conduct of any subsequent conventions shall be as provided by law. The petition must be filed ten (10) days prior to the last day provided by law for the holding of state party conventions and may contain the platform of the party. The names of the electors so petitioning need not all be on one (1) petition, but may be on one (1) or more petitions, but each petition shall be verified by at least one (1) signer thereof to the effect that the signers are qualified electors of the State of Idaho according to his best information and belief. If at the last preceding gubernatorial election there was polled for any one (1) of its candidates for any state or national office, at least three per cent (3%) of the aggregate vote cast for the office of governor, or

(c) By an affiliation of not less than fifteen hundred (1,500) electors, who shall, at least thirty (30) days prior to the last day provided by law for the holding of state party conventions, file with the secretary of state a petition that they desire recognition as a political party, which said petition shall contain:

(A) The name of the proposed party.

(B) That the subscribers thereto have affiliated one with another, for the purpose of forming such party.

(C) That the subscribers to such notice intend to nominate at least three (3) candidates for state or national offices whereupon such affiliation shall, under the party name chosen, have all the
rights of a political party whose ticket shall have been on the ballot at the preceding general election.

(2) The party or group shall after filing a qualified petition proceed to hold a state convention in the manner and at the time provided by law; provided, that at the initial convention of any such newly-organized political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nomination of candidates. Thereafter, the conduct of any subsequent conventions shall be as provided by law. The names of the electors so petitioning need not all be on one (1) petition, but may be on one (1) or more petitions but each petition shall be verified by at least one (1) signer thereof to the effect that the signers are qualified electors of the state of Idaho according to his best information and belief.

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 March 16, 1971.

CHAPTER 131
(S. B. No. 1188)

AN ACT
AMENDING SECTION 34-1217, IDAHO CODE, RELATING TO THE CANVASSING OF RETURNS FOR JUDICIAL ELECTIONS BY STRIKING THE WORDS “GENERAL NOMINATING” AND INSERTING THE WORD “PRIMARY”, STRIKING THE WORD “NOMINATING” AND INSERTING THE WORD “PRIMARY”, AND BY INSERTING THE WORD “JUDICIAL”; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-1217, Idaho Code, be, and the same is hereby amended to read as follows:

34-1217. CANVASSING RETURNS OF JUDICIAL ELECTIONS – CERTIFICATES OF NOMINATION OR ELECTION. – The board of county commissioners shall canvass the returns of the judicial nominating election at the time the returns of the general nominating primary election
are canvassed, shall determine, and cause the county clerk to certify to the secretary of state, the result of said judicial nominating election. In such certificate the clerk shall set forth, following the name of each justice of the supreme court and each district judge for whom a successor is to be elected at the general election in that year, the vote received by each person who had declared himself to be, and who had been voted for as, a candidate to succeed such justice or district judge.

The returns so made to the secretary of state by the county clerk shall be canvassed by the state board of canvassers at the time the other returns of said nominating primary election are canvassed.

If it appears to the state board of canvassers upon the official canvass that at such judicial nominating election any candidate received a majority of all the votes cast for candidates to succeed a particular justice of the supreme court or district judge, said board shall certify to the secretary of state as duly elected to such office the name of the candidate who received such majority and such candidate whose name is so certified shall receive and the secretary of state shall issue and deliver to him a certificate of election to such office and he shall not be required to stand for election at the general election following.

In the event no candidate received a majority of all votes cast for candidates to succeed a particular justice of the supreme court or a particular district judge, the two (2) candidates receiving the greater number of votes cast for all candidates to succeed such justice of the supreme court or such district judge shall be and shall be declared to be nominees to succeed such justice or such district judge and their names as such nominees shall be placed on the official judicial ballot at the general election next following. The secretary of state shall certify the names of such nominees, including with each the name of the incumbent in office whom such candidates were nominated to succeed, to the county clerks at the time he certifies the names of candidates for other offices certified by him; provided, however, if another be appointed to succeed the incumbent person named on such judicial nominating ballot, the secretary of state shall insert in such certificate or in amendment thereto the name of the appointee in the place of the name of the incumbent person named on such judicial nominating ballot.

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 March 16, 1971.
CHAPTER 132
(H. D. No. 54, as amended, as amended in the Senate)

AN ACT
AMENDING SECTION 63-117, IDAHO CODE, RELATING TO EXEMPTIONS FROM AD VALOREM TAX FOR ELDERLY PERSONS, BY CHANGING THE REQUIREMENTS FOR CLAIMANTS ENTITLED TO EXEMPTION, AND BY PROVIDING THAT THE AMOUNT OF THE EXEMPTION SHALL NOT BE BASED ON ANY PERCENTAGE OF ASSESSED VALUE, BUT SHALL NOT EXCEED SEVENTY-FIVE DOLLARS; AMENDING SECTION 63-118, IDAHO CODE, RELATING TO DEFINITIONS, BY PROVIDING THAT THE REQUIRED RESIDENCY PERIOD OF FIFTEEN YEARS BE ELIMINATED; AMENDING SECTION 63-120, IDAHO CODE, RELATING TO TIME REQUIREMENTS TO CLAIM AN EXEMPTION, BY PROVIDING THAT A CLAIMANT MUST HAVE BEEN A REAL PROPERTY TAXPAYER FOR THE PERIOD REQUIRED, RATHER THAN A RESIDENT; DECLARING AN EMERGENCY; AND PROVIDING FOR RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-117, Idaho Code, be, and the same is hereby amended to read as follows:

63-117. EXEMPTIONS FOR RETIRED ELDERLY PERSONS. — Every person, a citizen and resident of this state for ten (10) years of the age of sixty-five (65) or more years, residing in a dwelling house or a trailer house owned by him and located upon real property leased or owned by him, shall be entitled to exemption from taxation on such property in the amount set forth below if the full cash value of such property owned by him is not in excess of fifteen thousand dollars ($15,000) and he makes a proper claim for such exemption:

In an amount equal to that percentage of the assessed value of such dwelling house or trailer house by which the ratio of assessed value of real property in the county in which such property is located exceeds the ratio of assessment of real property in such county for the calendar year 1966.

Not to exceed seventy-five dollars ($75.00).

SECTION 2. That Section 63-118, Idaho Code, be, and the same is hereby amended to read as follows:
63-118. DEFINITIONS. — As used in this act:

"Tax year" means the calendar year in which the tax is due and payable.

"Resident" means one legally domiciled within the state for a period of fifteen (15) years immediately preceding January 1 of the tax year. Mere seasonal or temporary residence within the state, of whatever duration, shall not constitute domicile within the state for the purposes of this act. Absence from this state for a period of twelve (12) months shall be prima facie evidence of abandonment of domicile in this state. The burden of establishing legal domicile within this state shall be upon the claimant.

"Retired" means a person who is no longer gainfully employed, and whose total income from all sources shall not exceed forty-eight hundred dollars ($4,800) per annum.

"Dwelling house" means the house in which a man lives with his family.

"Taxes" means taxes levied upon the assessed value of property in the usual and ordinary sense.

SECTION 3. That Section 63-120, Idaho Code, be, and the same is hereby amended to read as follows:

63-120. TIME REQUIREMENTS FOR EXEMPTION MUST EXIST. — Every fact essential to support a claim for exemption under this act shall exist on January 1 of the tax year. Every application by a claimant therefor shall establish that he was, on January 1 of the tax year, (a) a citizen and resident real property taxpayer of this state for the period required, (b) of the age of sixty-five (65) or more years, (c) the owner of a dwelling house or trailer house for which the exemption is claimed pursuant to section 63-117, Idaho Code.

SECTION 4. 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, and retroactively to January 1, 1971.

Approved March 17, 1971.
DEPOSITORIES, BY REDUCING THE MINIMUM MATURITY AND STRIKING THE MAXIMUM MATURITY TIME PERIOD FOR CERTIFICATES OF DEPOSITS; AMENDING SECTION 67-2742, IDAHO CODE, RELATING TO STATE DEPOSITORIES BY REDUCING THE MINIMUM MATURITY AND BY STRIKING THE MAXIMUM MATURITY TIME PERIOD FOR CERTIFICATES OF DEPOSIT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 57-131, Idaho Code, be, and the same is hereby amended to read as follows:

57-131. DEPOSITS SUBJECT TO PAYMENT ON DEMAND – TIME DEPOSITS. – All deposits in public depositories shall be subject to payment when demanded by the proper officer of the depositing unit except for time deposits of surplus or idle funds which the said depositing units are authorized to make with the approval of their respective supervising boards. Time deposits shall be evidenced by certificates of deposits having a maturity of not less than ninety (90) sixty (60) days nor more than one (1) year from the date of issue. The term “surplus or idle funds” shall mean the excess of available moneys in the public treasury, including the reasonably anticipated revenues, over and above the reasonably anticipated expenditures chargeable to those moneys taking into account the dates at which such revenues and expenditures may be expected to occur, the charges of expenses to revenues being done in such a manner as to produce the maximum amount of excess.

SECTION 2. That Section 67-2742, Idaho Code, be, and the same is hereby amended to read as follows:

67-2742. WITHDRAWAL OF MONEYS FROM DEPOSITORIES – TIME DEPOSITS. – All deposits in state depositories shall be subject to payment when demanded by the state treasurer on his check except time deposits of surplus or idle funds which the treasurer is hereby authorized to make. Time deposits shall be evidenced by certificates of deposit having a maturity of not less than ninety (90) sixty (60) days nor more than one (1) year from the date of issue.

The term “surplus or idle funds” shall mean the excess of available moneys in the state treasury, including the reasonably anticipated revenues, over and above the reasonably anticipated expenditures chargeable to those moneys, taking into account the date at which such revenues and expenditures may be expected to occur, the charges of expenses to revenues being done in such a manner as to produce the maximum amount of excess.
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 March 17, 1971.

CHAPTER 134
(H. B. No. 259)

AN ACT
RELATING TO INTEREST TO BE PAID ON TIME DEPOSITS OF STATE AND PUBLIC FUNDS; AMENDING SECTION 57-133, IDAHO CODE, TO PROVIDE THAT THE RATES OF INTEREST TO BE PAID BY A PUBLIC DEPOSITORY ON TIME DEPOSITS OF PUBLIC FUNDS SHALL BE FIXED AND ANNOUNCED BY THE TREASURER OF THE STATE OF IDAHO APPLYING AN INTEREST RATE NOT TO EXCEED ONE PERCENT ABOVE THE AVERAGE RATES BID FOR UNITED STATES TREASURY BILLS AT THE MOST RECENT AUCTION PRECEDING THE FIRST DAY OF EACH CALENDAR MONTH, AND PROVIDING THAT IN NO EVENT SHALL SUCH RATES EXCEED THE MAXIMUM PERMISSIBLE RATE AUTHORIZED BY STATE OR FEDERAL REGULATION; AMENDING SECTION 67-2743, IDAHO CODE, TO PROVIDE THAT THE RATES OF INTEREST TO BE PAID BY A STATE DEPOSITORY ON TIME DEPOSITS OF STATE FUNDS SHALL BE FIXED AND ANNOUNCED BY THE TREASURER OF THE STATE OF IDAHO APPLYING AN INTEREST RATE NOT TO EXCEED ONE PERCENT ABOVE THE AVERAGE RATES BID FOR UNITED STATES TREASURY BILLS AT THE MOST RECENT AUCTION PRECEDING THE FIRST DAY OF EACH CALENDAR MONTH, AND PROVIDING THAT IN NO EVENT SHALL SUCH RATES EXCEED THE MAXIMUM PERMISSIBLE RATE AUTHORIZED BY STATE OR FEDERAL REGULATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 57-133, Idaho Code, be, and the same is hereby amended to read as follows:
57-133. DEMAND DEPOSITS — NO INTEREST — PAYMENT OF SERVICE CHARGES — INTEREST ON TIME DEPOSITS. — No public depository shall pay interest to the depositing unit upon demand deposits made with it by such depositing unit, nor shall any such demand deposit bear interest.

The supervising boards of all depositing units are authorized in their discretion and from time to time to adopt, amend, and/or repeal rules and regulations not inconsistent with other provisions of this act providing for the payment by such depositing unit to its designated depository or depositories of reasonable charges for their services rendered in acting as such depositories. The rate of such charges and the terms and conditions thereof shall be fixed by such supervising boards in such rules and regulations, and shall be uniformly applicable to all designated depositories for such depositing unit under like circumstances and conditions. Such charges shall be allowed and paid from the funds of such depositing unit available for the payment of its general expenses as other claims against said funds are allowed and paid.

Every public depository shall pay interest upon time deposits made by the time public depositing unit and evidenced by certificates of deposit, at the rate hereinafter provided. The rate of interest to be paid upon such time deposits shall be the maximum permissible rate authorized by regulation of the board of governors of the federal reserve system for banks which are members of that system and for banks which are not members of the federal reserve system; the maximum permissible rate authorized by the federal deposit insurance corporation shall apply determined by the treasurer of the state of Idaho applying an interest rate not to exceed one percent (1%) above the average rates bid for United States treasury bills at the most recent auction preceding the first day of each calendar month during the year. For time deposits maturing within ninety-one (91) days, the rate shall not exceed one percent (1%) above the treasury bill rate for ninety-one (91) day treasury bills; for time deposits maturing after ninety-one (91) days but within one hundred eighty two (182) days, the rate shall not exceed one percent (1%) above the treasury bill rate for one hundred eighty two (182) day treasury bills; for time deposits maturing after one hundred eighty two (182) days but within two hundred seventy three (273) days, the rate shall not exceed one percent (1%) above the treasury bill rate for two hundred seventy three (273) day treasury bills; and for time deposits maturing after two hundred seventy three (273) days, the rate paid shall not exceed one
percent (1%) above the treasury bill rate for one (1) year treasury bills. Such
rates of interest to be paid will be publicly announced by the treasurer of the
state of Idaho on the first business day of each calendar month of the year
and will apply until the following month when the new rates are determined
and announced; provided, however, that such rates of interest shall in no
event exceed the maximum permissible rates authorized by state or federal
regulation.

SECTION 2. That Section 67-2743, Idaho Code, be, and the same is
hereby amended to read as follows:

67-2743. NO INTEREST PAID ON DEMAND DEPOSITS --
INTEREST ON TIME DEPOSITS. -- No state depository shall pay interest
upon demand deposits made by the state treasurer under the provisions of
this chapter nor shall any such demand deposits bear interest. Every state
depository shall pay interest upon time deposits made by the state treasurer
and evidenced by certificates of deposit at the rate hereinafter provided. The
rate of interest to be paid upon such time deposits shall be the maximum
permissible rate authorized by regulation of the Board of Governors of the
Federal Reserve System for banks which are members of that system and for
banks which are not members of the Federal Reserve System, the maximum
permissible rate authorized by the Federal Deposit Insurance Corporation shall
apply determined by the treasurer of the state of Idaho applying an interest
rate not to exceed one percent (1%) above the average rates bid for United
States treasury bills at the most recent auction preceding the first day of
each calendar month during the year. For time deposits maturing within
ninety-one (91) days, the rate shall not exceed one percent (1%) above the
treasury bill rate for ninety-one (91) day treasury bills; for time deposits
maturing after ninety-one (91) days but within one hundred eighty two
(182) days, the rate shall not exceed one percent (1%) above the treasury bill
rate for one hundred eighty two (182) day treasury bills; for time deposits
maturing after one hundred eighty two (182) days but within two hundred
seventy three (273) days, the rate shall not exceed one percent (1%) above
the treasury bill rate for two hundred seventy three (273) day treasury bills;
and for time deposits maturing after two hundred seventy three (273) days,
the rate paid shall not exceed one percent (1%) above the treasury bill rate
for one (1) year treasury bills. Such rates of interest to be paid will be
publicly announced by the treasurer of the state of Idaho on the first
business day of each calendar month of the year and will apply until the
following month when the new rates are determined and announced;
provided, however, that such rates of interest shall in no event exceed the maximum permissible rates authorized by state or federal regulation.

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 March 17, 1971.

CHAPTER 135
(S. B. No. 1183 as amended in the House)

AN ACT
AMENDING SECTION 23-922, IDAHO CODE, BY PROVIDING THAT IT SHALL BE A MISDEMEANOR TO MAKE A FALSE STATEMENT IN AN APPLICATION FOR A BARTENDER’S PERMIT AND PROVIDING A PENALTY.

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

SECTION 1. That Section 23-922, Idaho Code, be, and the same is hereby amended to read as follows:

23-922. BARTENDERS – PERMITS – QUALIFICATIONS – PENALTY. – It shall be unlawful for any person to act as a bartender in any premises licensed under the provisions of this act unless such person shall hold a permit therefor from the commissioner. Application for permit shall be made on forms furnished by the commissioner and shall be accompanied by a permit fee of two dollars and fifty cents ($2.50). No person shall receive a permit as a bartender unless he shall establish to the satisfaction of the commissioner that he:

1. Is twenty-one (21) years of age or over, except as hereafter provided:

2. Has not, within three (3) years from the date of making application, been convicted of any violation of the laws of the United States, the state of Idaho including this act, or any other state of the United States, or of the resolution or ordinances of any county or city of this state, relating to the importation, transportation, manufacture, possession or sale of alcoholic liquor or beer or been convicted, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of confinement for any felony within five (5) years prior to the date of making application for a permit.
3. Has not had, as an individual, member of a partnership or association, a license issued under the provisions of this act revoked, or been an officer, member of the governing board or one (1) of the ten (10) principal stockholders of a corporation licensed hereunder and whose license has been revoked, such revocation in any instance to be within five (5) years of the application for permit as a bartender.

If any false statement of a material fact is knowingly made in any part of the application for a permit, the person making such false statement shall be guilty of a petty misdemeanor.

Approved March 18, 1971.

CHAPTER 136
(S. B. No. 1030, As Amended, As Amended in the House)

AN ACT
FOR THE METHOD OF DETERMINING WHO SHALL BE REQUIRED TO BE BONDED, WHO SHALL STAND THE EXPENSE OF THE BONDS, AND WHO SHALL PROCURE BONDS; PROVIDING FOR TERMS AND CONDITIONS OF OFFICIAL BONDS FOR STATE EMPLOYEES, AND WHO MAY BE SURETY ON SUCH BONDS, PROVIDING THAT, IN THE COMMISSIONER'S DISCRETION, A BLANKET CORPORATE SURETY BOND MAY BE PURCHASED IN LIEU OF INDIVIDUAL BONDS, AND PROVIDING FOR APPROVAL OF ALL OFFICIAL BONDS OF EMPLOYEES BY THE GOVERNOR AND AS TO FORM AND LEGAL SUFFICIENCY BY THE ATTORNEY GENERAL AND FOR FILING OF SAME WITH THE SECRETARY OF STATE EXCEPT THAT THE BOND OF THE SECRETARY OF STATE IS TO BE FILED WITH THE STATE AUDITOR; PROVIDING THAT OFFICIAL SURETY BOND REQUIREMENTS SET FORTH IN OTHER LAWS MAY BE MET BY COMPLIANCE WITH THE "SURETY BOND ACT"; PROVIDING FOR APPROVAL, RECORDING AND REVIEW OF OFFICIAL BONDS GIVEN BY ANY COUNTY OR PRECINCT OFFICER AND PROVIDING FOR PROCEEDINGS TO DETERMINE SUFFICIENCY OF SURETIES AND PROVIDING FOR PROCEEDINGS WHEN SURETIES FOUND INSUFFICIENT; PROVIDING FOR ADDITIONAL BOND IN THE EVENT SURETIES FOUND INSUFFICIENT; PROVIDING THAT THE ORIGINAL BOND IS NOT DISCHARGED OR AFFECTED WHEN ADDITIONAL BOND GIVEN; PROVIDING FOR THE RECORDING OF OFFICIAL BONDS IN A BOOK ENTITLED "RECORD OF OFFICIAL BONDS"; PROVIDING FOR JOINT AND SEVERAL LIABILITY WHEN MORE THAN ONE SURETY INVOLVED ON ONE RISK; PROVIDING FOR CUSTODY OF OFFICIAL BONDS AND FOR A METHOD OF OBTAINING CERTIFIED COPIES OF OFFICIAL BONDS; PROVIDING THAT THE FORM OF OFFICIAL BONDS MUST BE SUCH THAT THE BOND IS JOINT AND SEVERAL; PROVIDING FOR THE EXTENT OF THE SURETIES, LIABILITY FOR BREACHES OF THE CONDITIONS THEREOF COMMITTED DURING THE TIME AN OFFICER CONTINUES TO DISCHARGE THE DUTIES OF OR HOLD OFFICE; PROVIDING THAT THE EXTENT OF THE SURETIES, LIABILITY WILL AUTOMATICALLY BE EXTENDED TO INCLUDE ALL DUTIES SUBSEQUENTLY IMPOSED UPON OR
REQUIRED OF ANY OFFICER COVERED BY SUCH SURETY BOND; PROVIDING THAT EVERY OFFICIAL BOND EXECUTED BY AN OFFICER IS IN FORCE AND OBLIGATORY UPON THE PRINCIPAL SURETIES THEREIN TO THE STATE OF IDAHO AND TO THE BENEFIT OF ALL PERSONS WHO MAY BE INJURED OR GRIEVED BY THE WRONGFUL ACT OR DEFAULT OF SUCH OFFICER IN HIS OFFICIAL CAPACITY AND PROVIDING THAT A PERSON SO GRIEVED MAY BRING SUIT UPON SUCH BOND ON HIS OWN WITHOUT AN ASSIGNMENT THEREOF; PROVIDING THAT SUCCESSIVE SUITS BY PERSONS INJURED MAY BE BROUGHT UPON THE BOND AND NO SUCH BOND IS VOID ON THE FIRST RECOVERY OF A JUDGMENT THEREON; PROVIDING THAT DEFECTS IN THE BOND DO NOT AFFECT THE LIABILITY OF THE SURETY THEREON; PROVIDING IF THERE IS AN EXECUTION OF AN ADDITIONAL BOND THE PARTY INJURED MAY BRING HIS ACTION BASED UPON EITHER BOND; PROVIDING THAT IF SEPARATE JUDGMENTS ARE RECOVERED ON BONDS BY AN INJURED PARTY SUCH PARTY IS ENTITLED TO HAVE EXECUTION ISSUED ON SUCH JUDGMENTS RESPECTIVELY BUT MUST ONLY COLLECT THE AMOUNT ACTUALLY ADJUDEG TO HIM ON THE SAME CAUSES OF ACTION IN ONE OF THE SUITS; PROVIDING FOR CONTRIBUTION BETWEEN SURETIES IN PROPORTION IN WHICH THE PENALTIES OF SUCH BOND BEAR TO THE OTHER INTO THE SUMS PAID RESPECTIVELY; PROVIDING FOR THE DISCHARGE OF SURETIES BY THE EXECUTION OF A NEW BOND TO REPLACE THE EXISTING SURETY EXCEPT THAT THE ORIGINAL SURETY REMAINS LIABLE AS TO ALL LIABILITIES INCURRED PREVIOUS TO THE APPROVAL OF SUCH NEW BOND; PROVIDING FOR THE GIVING OF SURETY BONDS BY PERSONS APPOINTED TO FILL A VACANCY IN OFFICE; PROVIDING THAT SURETIES MAY BE RELEASED BY COMPLYING WITH THE PROVISIONS HEREINAFTER SET FORTH IN SUBSEQUENT CODE SECTIONS; PROVIDING THE MANNER OF APPLICATION FOR RELEASE WHEN A SURETY DESIRES TO BE RELEASED; PROVIDING FOR A SERVICE OF THE STATEMENT REQUIRED IN THE APPLICATION OF THE OFFICER NAMED IN SUCH OFFICIAL BOND BEFORE THE SURETY MAY BE RELEASED;
REAL ESTATE; PROVIDING THAT IT IS THE DUTY OF THE
SECRETARY OF STATE IN CASE OF OFFICIAL BONDS OF
STATE OFFICERS OR EMPLOYEES AND THE COUNTY
RECORDER, IN THE CASE OF OFFICIAL BONDS OF COUNTY
OFFICERS OR EMPLOYEES TO NOTIFY THE GOVERNOR OR
THE BOARD OF COUNTY COMMISSIONERS, AS THE CASE MAY
BE, OF THE EXPIRATION OR FAILURE TO FURNISH AN
OFFICIAL BOND BY ANY STATE OR COUNTY OFFICIAL
REQUIRED TO SO FURNISH A BOND, AND IT SHALL BE THE
DUTY OF SUCH OFFICERS WITHIN THEIR RESPECTIVE
JURISDICTIONS TO COLLECT UNEARNED PREMIUMS THAT
MAY ACCRUE FOR ANY REASON AND CAUSE THE SAME TO BE
DEPOSITED IN THE STATE OR COUNTY TREASURY, AS THE
CASE MAY BE, TO THE CREDIT OF THE FUND OUT OF WHICH
THE SAME WAS ORIGINALLY PAID; AND DECLARING AN
EMERGENCY.

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

SECTION 1. That Section 1-408, Idaho Code, be, and the same is
hereby amended to read as follows:

1-408. OFFICIAL BOND. - The clerk of the Supreme Court must
execute an official bond in the sum of $5,000 shall be bonded to the state of
Idaho in the time, form and manner as prescribed by chapter 8, title 59,
Idaho Code.

SECTION 2. That Section 1-1102, Idaho Code, be, and the same is
hereby amended to read as follows:

1-1102. OATH, BOND, SALARY AND EXPENSES. - Said reporter
shall take the oath required to be taken by the judicial officers; give a bond.
to be approved by the judge of the district court, in the sum of $5,000.00,
conditioned for the faithful performance of his duties, which bond shall be
filed in the office of the secretary of state; and be bonded to the state of
Idaho in the form and manner prescribed by chapter 8, title 59, Idaho Code;
hold his office during the pleasure of said judge, and shall receive a salary of
$9,000.00 per annum, to be paid monthly. There shall be paid in addition to
said salary, to each of the court reporters of the district courts, out of the
state treasury, for each term of district court held by the judge thereof, for
the trial and disposition of causes and the transaction of business under the
laws of the state, in other counties than that in which said court reporter
resides, his actual and necessary expenses for traveling and attending each
term: provided, however, that no stenographic reporter shall be paid his salary, or any portion thereof, unless he shall have first taken and subscribed an oath that he has prepared the transcript of the testimony on appeal either in a civil or criminal action, or specified portion thereof, in the order in which the copy of the order directing him to prepare the same has been served upon him: provided, however, that the estimated cost of transcribing such transcript shall have been paid to such reporter at the time of the service of the copy of the order upon him.

SECTION 3. That Section 19-4802, Idaho Code, be, and the same is hereby amended to read as follows:

19-4802. SUPERINTENDENT OF THE IDAHO STATE POLICE — APPOINTMENT, TERM, SALARY, BOND, QUALIFICATIONS. — The governor shall appoint a superintendent of the Idaho state police who shall be the executive officer and shall have general charge of the work of the Idaho state police. The superintendent shall serve at the pleasure of the governor, and the salary of the superintendent shall be fixed for each term by the governor within the limits of any appropriation made therefor. The superintendent shall give an official bond with surety having been approved by the governor in the principal sum of $10,000 conditioned for the faithful performance of the duties of the superintendent, be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

SECTION 4. That Section 21-103, Idaho Code, be, and the same is hereby amended to read as follows:

21-103. AERONAUTICS DEPARTMENT. — (a) Creation. There is hereby created the Idaho department of aeronautics, consisting of the director of aeronautics, his assistants, and such help and employees as may from time to time be appointed or employed.

(b) Director, Term, Qualifications. There is hereby created the office of director of aeronautics. Except for the first term, which shall begin as soon as the governor can reasonably appoint a suitable person and which shall expire on the first Monday of January, 1951, (and thereafter) the term of office shall be four (4) years; the governor shall appoint a suitable person, having knowledge of aeronautics, to said office. The director of aeronautics shall be subject to removal by the governor for inefficiency, neglect of duty, malfeasance or nonfeasance in office. The director of aeronautics shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.
(c) Salary. The director shall devote full time to the performance of his official duties and shall receive as compensation therefor a yearly salary of $4,500, payable monthly, as are other employees of the state.

(d) Seal. The director shall have an official seal with which he shall authenticate his official acts.

(e) Employees. The director is authorized to employ such additional skilled and unskilled help and employees as may be needed, and for whose services funds have been appropriated. The members of any class of employees may be required to put up penal bonds at the discretion of the director. Employees shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code.

(f) Delegation of Powers. The director may, by written order filed in his office, delegate to any of his other assistants or employees any of the powers and duties vested in or imposed upon him by this act. Such delegated powers and duties may be exercised by such assistant or other person selected, in the name of the director.

(g) Location of Office. The director shall maintain his office at Boise, Ada County, Idaho.

(h) Annual Report. The director shall report in writing to the governor on the first day of December of each year, which report shall contain a summary of the proceedings of the department during the current year, a detailed and itemized statement of all revenue and of all expenditures made by or on the behalf of the department, such other information as the director may deem necessary or useful, and any additional information which may be requested by the governor.

(i) Hearings. All hearings held pursuant to the act shall be open to the public.

SECTION 5. That Section 22-3008, Idaho Code, be, and the same is hereby amended to read as follows:

22-3008. BOND OF ADMINISTRATOR. The commission may require the administrator, or any agent or employee appointed by the commission, to give a bond payable to the state of Idaho in the amount, and with the security and containing the terms and conditions the commission prescribes, shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act.

SECTION 6. That Section 22-3708, Idaho Code, be, and the same is hereby amended to read as follows:
22-3708. BONDS. — The commission may require the administrator or any agent or employee appointed by the commission to give a bond payable to the state of Idaho in the amount and with the security and containing the terms and conditions the commission describes, shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act.

SECTION 7. That Section 22-3608, Idaho Code, be, and the same is hereby amended to read as follows:

22-3608. BONDS. — The commission may require the administrator, or any agent or employee appointed by the commission, to give a bond payable to the state of Idaho in the amount, and with the security and containing the terms and conditions the commission prescribes, shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act.

SECTION 8. That Section 22-3311, Idaho Code, be, and the same is hereby amended to read as follows:

22-3311. BONDS OF AGENTS AND EMPLOYEES. — The commission may require the administrator, or any agent or employee appointed by the commission, to give a bond payable to the state of Idaho in the amount, and with the security and containing the terms and conditions the commission prescribes, shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act.

SECTION 9. That Section 22-3512, Idaho Code, be, and the same is hereby amended to read as follows:

22-3512. BONDS OF ADMINISTRATOR, AGENTS OR EMPLOYEES. — The commission may require the administrator, or any agent or employee appointed by the commission, to give a bond payable to the state of Idaho in the amount, and with the security and containing the terms and conditions the commission prescribes, shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this act.

SECTION 10. That Section 23-207, Idaho Code, be, and the same is hereby amended to read as follows:

23-207. SPECIFIC RULES AND REGULATIONS. — Without
attempting or intending to limit the general powers of the superintendent of the dispensary contained in section 23-206, such powers shall extend to and include the following:

(a) To prescribe the duties of the secretary, and to supervise his conduct while in the discharge of his duties.

(b) To prescribe the qualifications of and to select clerks, accountants, agents, vendors, inspectors, servants, legal counsel, and other personnel to conduct its business and perform its functions; to require from that those holding positions of trust, bonds with approved sureties; be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code; to fix the compensation of all appointees and employees, assign their duties, and to discharge them.

(c) To regulate the management, operation, bookkeeping, reporting, equipment, records, and merchandise of state liquor stores and distribution stations and warehouses.

(d) To regulate the importation, purchase, transportation, and storage of alcoholic liquor and the furnishing of alcoholic liquor to state liquor stores, distribution stations, and warehouses established under this act.

(e) To determine the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses and for sale at state liquor stores and distribution stations.

(f) To determine the nature, form, and capacity of packages containing liquor kept or sold.

(g) To prescribe the kinds and character of official seals or labels to be attached to packages of liquor sold.

(h) From time to time to fix the sale prices, which shall be uniform throughout the state, of the different classes, varieties, or brands of alcoholic liquor, and to issue and distribute price lists thereof.

(i) To prescribe, prepare, and furnish printed forms and information blanks necessary or convenient for administering this act, and printed copies of the regulations made thereunder. To contract for the printing thereof and of all necessary records and reports.

(j) To regulate the issuance, suspension and revocation of permits and licenses to purchase, manufacture and handle or traffic in alcoholic liquor.

(k) To prescribe the conditions and qualifications necessary for obtaining permits and licenses, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of use of permittees and licensees.
(I) To prescribe the kind, quality, and character of alcoholic liquors which may be purchased or sold under any and all licenses and permits, including the quantity which may be purchased or sold at any one (1) time or within any specified period of time.

SECTION 11. That Section 23-209, Idaho Code, be, and the same is hereby amended to read as follows:

23-209. OFFICIAL BOND OF SUPERINTENDENT. — The superintendent shall post with the secretary of state an official bond in the penal sum of $25,000, written by a surety company authorized to transact business in Idaho, conditioned for the faithful performance of his duties under this act, be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code.

SECTION 12. That Section 25-127, Idaho Code, be, and the same is hereby amended to read as follows:

25-127. MEMBERS — APPOINTMENT, QUALIFICATIONS, SALARY — BOND AND OATH. — The state board of sheep commissioners, hereinafter called the board, shall consist of five (5) members, all of whom shall be experienced wool growers and no two (2) of whom shall be from the same county; said members shall be appointed by the governor and hold their offices for the term for which they are appointed and thereafter until their successors are duly appointed and qualified. In making said appointments, the governor shall consider for appointment to said board the members of the former state board of sheep commissioners.

As vacancies occur upon the board, the Idaho Wool Growers Association shall submit to the governor the names of two (2) persons qualified and suitable for appointment for each such vacancy from whom the governor shall make his appointment to fill such vacancies. The first commissioners shall be appointed for the following terms: two (2) commissioners shall be appointed to hold office until the first Monday of January 1952; two (2) commissioners shall be appointed to hold office until the first Monday of January 1954; one (1) commissioner shall be appointed to hold office until the first Monday of January 1956; and at the expiration of said dates for the commissioners first appointed and until the expiration of terms thereafter, commissioners shall be appointed to fill such vacancies for a term of six (6) years; and in case of any vacancy occurring in the office of commissioner at any time other commissioners shall be appointed, who in each instance shall hold office until the unexpired term of the commissioner whom he is appointed to succeed. Each of said commissioners, before
entering upon the duties of his office, shall take and subscribe to the oath of office required by section 59-401, Idaho Code, and enter into a bond with sufficient sureties, in the penal sum of $1,000, payable to the state of Idaho and conditioned for the faithful performance of the duties of his office, which bond shall be approved by the governor and filed in the office of the secretary of state. He shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The members of the board shall receive for their services the sum of five dollars ($5.00) per day and actual expenses incurred while in the discharge of their duties. Said compensation shall be paid from the sheep commission fund in the same manner as other expenses are paid. Each member of said board shall be a qualified elector of the county from which he is chosen and must reside during his term of office within the state of Idaho. Said board must hold a meeting semiannually and at any other time if so requested by any member of the board.

This section shall be expressly exempt from the terms of chapter 161, 1949 Session Laws cited and known as the "Standard Travel Pay and Allowance Act of 1949."

SECTION 13. That Section 25-129, Idaho Code, be, and the same is hereby amended to read as follows:

25-129. RULES AND REGULATIONS — EXECUTIVE SECRETARY, VETERINARIAN, INSPECTORS, SALARIES, EXPENSES AND OFFICE. — (1) The board shall elect one (1) of its members president. The said board is empowered to make rules and regulations for governing itself and such rules and regulations as it may deem necessary for the enforcement of the provisions of this act and to enforce all such rules and regulations, and shall have exclusive control of all matters pertaining to the sheep industry. It shall be empowered to make and enforce rules and regulations for quarantining, dipping or otherwise treating sheep which may be infected, affected or infested with scabies, ticks, lice or any other parasites detrimental or injurious to sheep, or any infectious or contagious disease of sheep and for the speedy and effective suppression and extirpation of infectious or contagious diseases, scabies, ticks, lice or other parasites detrimental to sheep as are not in conflict with the provisions of this act. All such rules and regulations adopted by said board shall have the same force and effect as law and any person, association, firm or corporation violating such rules or regulations shall be deemed guilty of a misdemeanor.

(2) The board is empowered to select an executive secretary who may
or may not be a member of the board, and such executive secretary shall have the authority and power to sign any and all lawful claims or vouchers to be made, filed or drawn by or on behalf of the board against the “sheep commission fund,” hereinafter described for the payment of money, and for such purposes he shall be regarded as the head of the department and he shall perform such other and further duties as the board shall direct.

(3) The board is empowered to appoint, with the approval of the governor, a veterinarian in charge, who must be duly licensed in the state of Idaho and who is a graduate of a recognized and accredited school of veterinary medicine, but who may or may not be the regular director of the bureau of animal industry, whose duties and powers shall be defined and prescribed by said board; which said officer, before entering upon the duties of his office, shall execute and file a bond in the sum of $1,000, payable to the state of Idaho, for the faithful performance of his duties, with and to be approved by the board. shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The veterinarian in charge shall receive such compensation as may be allowed by said board and actual and necessary expenses incurred in the performance of his duties. Provided, that where the director of the bureau of animal industry is designated by said board as its veterinarian in charge, such director shall not receive any additional salary for such work, but all of his traveling and other expenses incurred in the handling of such additional duties shall be a charge against said sheep commission fund and shall be paid therefrom. The veterinarian in charge shall be at all times subject to the authority of the board and shall have the same powers hereinafter provided for all other inspectors appointed by the board under this act. The veterinarian in charge shall have authority and power to sign all lawful claims or vouchers filed or drawn on behalf of the board against the sheep commission fund.

(4) The board is hereby empowered to appoint all other inspectors, veterinarians and such other employees and assistants as may be necessary to carry out the duties and powers herein conferred and fix the compensation of all such appointees. All salaries and expenses of every kind incurred in carrying out the provisions of this act shall be paid from the sheep commission fund herein created.

SECTION 14. That Section 25-1101, Idaho Code, be, and the same is hereby amended to read as follows:

25-1101. BOARD CREATED — MEMBERSHIP AND ORGANIZATION. — There shall be in the government of the state of Idaho
a state brand board and such board is hereby created. The state brand board, hereinafter called the board, shall consist of three (3) members, all of whom shall be experienced in, and while serving as a member of such board, continuously and principally, engaged in, the production of beef cattle in Idaho and no two (2) of whom shall be from the same county; said members shall be appointed by the governor. The term of office of each member of said board shall be six (6) years, excepting that of the members of said board first appointed, one (1) shall be appointed to hold office until the first Monday in January, 1949, one (1) until the first Monday of January, 1951, and one (1) until the first Monday of January, 1953. Vacancies occurring on the board other than by expiration of the term, shall be filled for the unexpired term only. Each of such members of the board, before entering upon the duties of his office, shall take and subscribe to the constitutional oath of office, and enter into a bond with sufficient sureties, in the penal sum of twenty-five hundred dollars ($2,500) payable to the state of Idaho, and conditioned for the faithful performance of the duties of his office, which bond shall be approved by the governor and filed in the office of the secretary of state. be bonded to the state of Idaho in the time, form and manner provided by chapter 8, title 59, Idaho Code. The members of the board shall receive for their services the sum of twenty-five dollars ($25.00) per day and actual expenses incurred while in the discharge of their duties. Said compensation shall be paid from the state treasury of the state of Idaho in the same manner as other expenses of the state are paid. Each member of said board shall be a qualified elector of the county from which he is chosen and must reside during his term of office, within the state of Idaho. Said board must hold a meeting quarterly and at any other times if so requested by any member of the board. The governor shall appoint the members of such board both initially and thereafter as vacancies occur therein, with regard to the recommendations of the executive committee or board of directors of the Idaho cattlemen's association and any other generally recognized statewide association or associations composed of persons engaged in the production of beef cattle in Idaho. Each such recommendation shall be of at least two (2) persons for each appointment to be made by the governor. If no such recommendation is made within thirty (30) days after the occurrence of any vacancy in the membership of such board, then the appointment may be made without such recommendation. If the person or persons recommended are not deemed eligible or fit by the governor, then such appointment may be made irrespective of such
recommendation. A member of such board shall be ineligible to hold any other state or federal office providing full-time employment, or any county or elective office. After due notice and public hearing, the governor may remove any member for cause.

The board shall elect one (1) of its members chairman, and there shall be a state brand inspector who shall serve as secretary of such board. The board is empowered to make rules and regulations for governing itself, and such rules and regulations as it may deem necessary for the enforcement of all of the duties of the state brand inspector, the laws of the state of Idaho providing registration and use of stock growers' brands, and the laws of the state of Idaho providing inspection and other requirements for the transportation of cattle, horses and mules, and all laws of the state enacted for the identification, inspection and transportation of cattle, horses, and mules, and all laws of the state designed to prevent theft of livestock.

SECTION 15. That Section 25-1102, Idaho Code, be, and the same is hereby amended to read as follows:

25-1102. STATE BRAND INSPECTOR — APPOINTMENT, SALARY, BOND. — The state board shall appoint the state brand inspector who shall serve at the pleasure of such board and the salary of such officer shall be fixed by such board within the limits of any appropriation available therefor.

The state brand inspector shall give an official bond with surety having been approved by the board in such principal sum as shall be fixed by the board, conditioned for the faithful performance of the duties of the office of state brand inspector be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

SECTION 16. That Section 33-2804, Idaho Code, be, and the same is hereby amended to read as follows:

33-2804. GENERAL DUTIES OF BOARD. — The members of the state board of education in the performance of their functions as the board of regents of the university and their successors in office, shall constitute a body corporate, by the name of the regents of the University of Idaho, and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said university. The board shall elect a president, secretary and treasurer, who shall perform such duties as shall be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board and of the executive committee thereof. The treasurer shall perform all the duties of
such office, subject to such regulations as the board may adopt, and for the faithful discharge of all his duties shall execute a bond in such sum as the board may direct, shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

SECTION 17. That Section 36-102, Idaho Code, be, and the same is hereby amended to read as follows:

36-102. ABOLITION OF FISH AND GAME COMMISSION — CREATION OF IDAHO FISH AND GAME COMMISSION. — (a) The fish and game commission of the state of Idaho is hereby abolished and there is hereby created in its place the Idaho fish and game commission. The fish and game department of the state of Idaho is hereby placed under the supervision, management and control of the Idaho fish and game commission, hereinafter referred to as the commission, or as said commission. The terms of office of all members of the fish and game commission of the state of Idaho, hereby abolished, are hereby terminated, and the governor is hereby authorized and directed to appoint members of the Idaho fish and game commission, as herein provided for, subject to removal by the governor, at his pleasure. Provided further, that said members so appointed shall act and assume full powers and duties, as herein provided for, upon appointment but such appointments to be subject to confirmation by the senate at its next session.

(b) Membership — Appointment — Qualifications. The commission shall consist of five (5) members, to be appointed by the governor of the state of Idaho, who shall hold office during the pleasure of the governor and who shall be subject to removal by him, and upon a removal of any member of said commission, the governor shall appoint a member to fill the vacancy for the unexpired term, but subject to removal as herein provided for. The selection and appointment of said members shall be made solely upon consideration of the welfare and best interests of the fish and game department, and no person shall be appointed a member of said commission unless he shall be well informed upon, and interested in, the subject of wildlife conservation and restoration, or who shall hold any other elective or appointive office, state, county or municipal, or any office in any political party organization, and not more than three (3) of the members of said commission shall at any time belong to the same political party. Each of the members of said commission shall be a citizen of the United States, and of the state of Idaho, and a bona fide resident of the district from which he is appointed as hereinafter set forth.
(c) Creation of Districts — Residence of Members — Terms of Office. For the purpose of this act, the state of Idaho is divided into five (5) districts, numbered from one (1) to five (5) respectively.

District No. 1 shall consist of the counties of Boundary, Bonner, Kootenai, Shoshone, and Benewah;

District No. 2 shall consist of the counties of Latah, Clearwater, Nez Perce, Lewis and Idaho;

District No. 3 shall consist of the counties of Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore and Owyhee;

District No. 4 shall consist of the counties of Camas, Gooding, Jerome, Twin Falls, Cassia, Blaine, Lincoln, Minidoka, Lemhi, Custer and Butte;

District No. 5 shall consist of the counties of Clark, Fremont, Jefferson, Madison, Teton, Bingham, Bonneville, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake.

Each of the said above enumerated districts shall, at all times, be represented by one (1) member of said commission, appointed from said district and the governor's appointment of said commissioners shall be made as follows: one (1) commissioner from District No. 1, one (1) commissioner from District No. 2, one (1) commissioner from District No. 3, one (1) commissioner from District No. 4, and one (1) commissioner from District No. 5. The governor shall appoint the members of said commission within thirty (30) days after the passage and approval of this act.

The members of said commission to be appointed from District No. 1 shall be appointed for a term of two (2) years; the members appointed from District No. 2 and District No. 3 shall be appointed for a term of four (4) years; the members appointed from District No. 4 and District No. 5 shall be appointed for the term of six (6) years; and thereafter as the term of each commissioner expires his successor shall be appointed from the same district for a term of six (6) years; provided, that in the case of the death of any commissioner, or his removal from the district from which he was appointed, or his resignation, or his removal from office as hereinbefore provided, the governor shall appoint a successor from the same district for the unexpired term, which successor shall possess the qualifications hereinabove specified.

(d) Oath of Office — Bond. Each commissioner shall, before entering upon his official duties, take and subscribe to the official oath, in writing, as provided by section 59-401, Idaho Code, to which said official oath there shall be added a declaration as to the name of the political party to which such commissioner belongs; and shall execute and file with the secretary of
state, running to the state of Idaho, a bond in the penal sum of one thousand dollars ($1,000.00), with sureties to be approved by the state treasurer, conditioned for the faithful performance of his duties, and that he will account for and pay over to the fish and game fund of the state of Idaho all moneys which shall be received by him in his official capacity. The premium on such bond shall be paid out of the fish and game fund. The writer shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Compensation and Reimbursement for Expenses. Each member of the commission shall receive twenty-five dollars ($25.00) for each day while attending official meetings of the commission called as provided herein, or while on official business authorized by said commission. Each commissioner shall be entitled to reimbursements for actual and necessary transportation expenses in the discharge of his official duties authorized by the said commission, all of said compensation and expenses to be paid from the fish and game fund, but no member of said commission shall receive as salary more than one thousand dollars ($1,000) in any one (1) year.

(f) Quorum. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power.

(g) Office and Supplies. The commission shall have its principal office in the city of Boise. The commission is authorized to purchase all supplies, equipment, printed forms, and notices, and to issue such publications as it may deem necessary to carry out the purpose of sections 36-102 – 36-106, 36-108 – 36-111, Idaho Code.

SECTION 18. That Section 36-105, Idaho Code, be, and the same is hereby amended to read as follows:

36-105. DIRECTOR OF FISH AND GAME DEPARTMENT. — (a) Office of Fish and Game Warden Abolished – Office of Director Created. The office of the fish and game warden is hereby abolished, and the office of director of the fish and game department is hereby created. Upon the organization of the commission, as hereinbefore provided for, said commission shall appoint a director of the fish and game department, who shall be a man with knowledge of, and experience in, the requirements for the protection, conservation, restoration, and management of the wildlife resources of the state. The director shall not hold any other public office, nor any office in any political party organization, and shall devote his entire time to the service of the state in the discharge of his official duties, under the direction of the commission.
(b) The director shall serve as secretary to the commission.

(c) Compensation and Expenses. The director shall receive such compensation as the commission with the concurrence and approval of the governor may determine and shall be reimbursed for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties, not to exceed such sum as shall be approved by the commission with the concurrence and approval of the governor.

(d) Oath and Bond. Before entering upon the duties of his office, the director shall take, and subscribe to, the official oath of office, as provided by section 59-401, Idaho Code, and shall, in addition thereto, swear and affirm that he holds no other public office, nor any position under any political committee or party. Such oath, or affirmation, shall be signed in the office of the secretary of state.

The director shall execute and file with the state treasurer a bond to the people of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, in the sum of ten thousand dollars ($10,000.00), conditioned for the faithful performance of his duties, and that he will account for and pay over, pursuant to law, all moneys received by him in his official capacities. The premiums on such bond shall be paid from the fish and game fund.

(e) Duties and Powers. The director shall have general supervision and control of all activities, functions, and employees of the fish and game department, under the supervision and direction of the commission, and shall enforce all the provisions of the laws of the state, and rules and regulations of the commission relating to wild animals, birds, and fish, and under the supervision and direction of the commission, shall perform all the duties enjoined upon the fish and game warden by the provisions of the laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

The director is hereby authorized to appoint, with the approval of the commission, one (1) chief clerk, and such additional clerks as may be necessary to perform the clerical duties devolving upon his department. Said chief clerk shall execute a bond to the state of Idaho in the sum of ten thousand dollars ($10,000.00), conditioned for the faithful performance of his duties, and such additional clerks to be required to execute similar bonds, as deemed advisable by the commission, in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. Said appointments shall be under the civil service rules, adopted and promulgated by the commission, and upon examination.
SECTION 19. That Section 36-106, Idaho Code, be, and the same is hereby amended to read as follows:

36-106. CONSERVATION OFFICERS. — (a) Appointment and Selection. The director is hereby authorized to appoint, with the approval of the commission, as many conservation officers, fish hatchery superintendents, and other classified civil service employees, as may be required to efficiently enforce the laws for the protection of wild animals, birds, and fish, and for carrying out the purposes of sections 36-102 — 36-106, 36-108 — 36-111, Idaho Code.

All appointments of the conservation officers, fish hatchery superintendents, and other classified civil service employees, hereafter made shall be under the civil service rules, adopted and promulgated by the commission, and upon examination. Such examination shall embrace an investigation of the character, habits and qualifications of each applicant, as to his knowledge of the state fish and game laws, and the duties and responsibilities appertaining to the position of conservation officer, fish hatchery superintendent, or other classified civil service employee.

(b) Compensation and Advancement. Each conservation officer shall receive a salary of not less than one thousand five hundred dollars ($1,500.00) per annum, payable in monthly installments: provided, however, that each officer who shall have been rated in the first grade may receive increased salary at the rate of two hundred dollars ($200.00) per annum, and for each year thereafter in which he shall so qualify, he may receive a like increase until he receives such sum as the commission, with the concurrence and approval of the governor, shall fix as a maximum salary for first grade conservation officers; and that each officer who has been rated in the second grade may receive increased salary at the rate of one hundred dollars ($100.00) per annum, and for each year thereafter in which he shall so qualify he may receive a like increase until he receives such sum as the commission, with the concurrence and approval of the governor, shall fix as a maximum salary for second grade conservation officers; provided, however, the commission shall have power, at its discretion, for cause shown, to cancel such increase, or any part thereof, or to allow a larger annual increase.

Provided further that if there are not sufficient funds to pay the whole of said salary increase, only such proportion thereof shall be paid as the funds of the department will permit.

Each of said Said conservation officers shall be bonded execute a bond to the state of Idaho in the time, form and manner prescribed by chapter 8,
title 59, Idaho Code. in the penal sum of one thousand dollars ($1,000.00),
conditioned on the faithful performance of his duties.

Each conservation officer shall be entitled to reimbursement in an
amount approved by the commission for actual and necessary transportation
and subsistence expenses incurred in the discharge of his official duties when
traveling away from his official headquarters.

(c) Political Activity Prohibited. While retaining the right to vote as he
may please, and to express his opinion on all political subjects, no employee
or officer of the commission shall take any active part in political party
management, or in political campaigns, nor shall he use his official authority,
or influence, for the purpose of interfering with an election or affecting the
results thereof, or for the purpose of coercing the political action of any
person or body.

SECTION 20. That Section 36-114, Idaho Code, be, and the same is
hereby amended to read as follows:

36-114. CONSERVATION OF FISH AND GAME — POWERS OF
DIRECTOR. — It shall be lawful for the director of the department of fish
and game or any person appointed by him in writing to do so, to take fish
and game of any kind, dead or alive, or import the same, in any manner
under the direction of the director of the department of fish and game,
subject to such conditions, restrictions and regulations as he may provide,
for the purpose of inspection, cultivation, propagation, distribution,
scientific or other purposes deemed by him to be of interest to the fish and
game industry of the state; and for the purpose of carrying into effect the
provisions of this section, the director of the department of fish and game is
authorized to acquire, by any means which he deems expedient, property for
the purposes of propagation, cultivation and distribution of game or game
birds of any kind within the state of Idaho; and he shall have supervision
over all of the matters pertaining to the inspection, cultivation, propagation
and distribution of the game or game birds propagated under the provisions
of this act. He shall also have the power and authority to obtain, from
persons outside of the state of Idaho, by purchase or otherwise, eggs or game
or game birds of any kind or variety which he may deem most suitable for
distribution in the state and may have the same properly cared for and
distributed throughout the state of Idaho as he may deem necessary. He shall
also have the power to appoint superintendents and assistants of any game
farm which he may deem necessary to establish within the state of Idaho and
shall have supervision over all matters pertaining thereto. He may require a
bond of the superintendent of the game farm or any of his deputies connected therewith in the same sum as has been provided for other deputies appointed by him. time, form and manner prescribed by chapter 8, title 59, Idaho Code.

SECTION 21. That Section 36-118, Idaho Code, be, and the same is hereby amended to read as follows:

36-118. DEPUTIES - LIMITATIONS - BONDS - POWER. - All assistant chief and local deputies appointed under the provisions of this act shall devote their entire time to the duties of their office, and they shall not hold any other office, nor engage in any other business, or occupation. Each of the assistant chief deputies shall execute a bond to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, a bond in the sum of $3000, conditioned upon the faithful performance of their duties, and each of the other deputies appointed under this act shall execute a bond to the state of Idaho in the sum of $1000, conditioned in like manner, and all of such officers shall have the same power to make arrests as the director of the fish and game department, and shall have the power to perform the duties of their office in any district of the state.

SECTION 22. That Section 36-1603, Idaho Code, be, and the same is hereby amended to read as follows:

36-1603. BOND OF CARETAKERS OR OPERATORS. - Such caretakers or operators shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. sum of $500 for the faithful performance of their duties.

SECTION 23. That Section 38-409, Idaho Code, be, and the same is hereby amended to read as follows:

38-409. BOND OF STATE LAND COMMISSIONER OR FOREST WARDEN. - The state land commissioner shall give a bond in such amount as may be fixed by the board of examiners conditioned for the faithful performance of his duties under the provisions of sections 38-401 - 38-410 and in the event any of the duties of the state land commissioner are delegated to a forest warden, the board may require the forest warden to give bond in an amount as may be fixed by the said board of examiners. The cost of the bond furnished by the state land commissioner and the forest wardens under sections 38-401 - 38-410 shall be paid for by the state land commissioner from the forest management fund, be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.
SECTION 24. That Section 39-106, Idaho Code, be, and the same is hereby amended to read as follows:

39-106. STATE BOARD OF HEALTH — POWERS AND DUTIES. — All of the powers and duties of the department of public health are hereby transferred to the state board of health and the state board of health shall have all of such powers and shall exercise the following powers and duties in addition to all other powers and duties imposed on it by law:

(1) Appoint an administrator of health, as herein provided, who shall qualify by taking and subscribing the constitutional oath, and shall advise him in the performance of his duties and formulate general policies affecting the public and mental health.
(2) Exercise all the authority heretofore vested in the department of public health.
(3) To issue licenses and permits as prescribed by law and by the rules and regulations of the board.
(4) To have general supervision of the promotion and protection of the life, health, and mental efficiency of the people of the state, and endeavor to make profitable and intelligent use of the collected record of sickness and mortality of the people.
(5) To make special investigations of the sources of morbidity, mortality and the effects of localities, employment, conditions and circumstances on the public and mental health.
(6) To administer and enforce all state health laws, regulations and standards.
(7) To investigate and control the cause of epidemics, infectious and communicable diseases, and other diseases affecting the public health and mental health, the causes of mortality and the effects of localities, employment, conditions, ingesta habits and circumstances on the health of the people.
(8) To develop and carry out reasonable health programs, consistent with law, that may be deemed necessary or desirable for the protection of the public health, mental health, and for the control of disease.
(9) To study the influence of climate upon disease and health in the different localities of the state for the benefit of the citizens thereof, as well as for the information of those who contemplate making this state their home.
(10) To perform such duties as are required by law for the detection and prevention of the adulteration of articles used for food and drink.
(11) To close theatres, schools, public places, and forbid gatherings of people when necessary to protect the public health.

(12) To investigate the causes of maternal and infant mortality.

(13) To supply, without cost, at the discretion of the state board of health, or upon the proper requisition of the county health officer, biologics and drugs for the prevention and control of communicable diseases.

(14) To continue the use of the official seal. Copies of the board’s records and proceedings and copies of papers and documents in its possession may be authenticated with the seal, attested by the administrator of health or his authorized representative, and when so authenticated shall be received in evidence as to the same extent and effect as the originals.

(15) To establish and maintain laboratories, furnishing services therefor, and establish standards of diagnostic tests for communicable diseases for laboratories operated by any city, county, institution, person, firm or corporation and require such laboratories to conform thereto.

(16) To provide for the bonding to the state of Idaho of those employees of the board in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. whose duties and functions require bonding for the faithful performance of their duties in such forms and in such amounts as shall be determined by the board. Premiums on such bonds shall be paid as in operating expenses of the board, and such bonds shall be filed with the secretary of state.

(17) To disseminate public health information on all such matters and to distribute free of cost or at cost, documents, reports, bulletins and other health informational matter relating to health.

(18) It is authorized to delegate any authority invested in it and to provide subdelegation of any such authority.

SECTION 25. That Section 40-115, Idaho Code, be, and the same is hereby amended to read as follows:

40-115. OATH OF OFFICE — BOND. — Each member of the board shall receive a certificate of appointment from the governor, and before entering upon the discharge of his official duties, shall file with the secretary of state the constitutional oath of office, to which and as a part thereof shall be added a declaration of the political party to which said board member belongs, and shall also be bonded to the state of Idaho in the time, form and
manner prescribed by chapter 8, title 59, Idaho Code. filed with the secretary
of state a bond or bonds in the penal sum of ten thousand dollars
($10,000.00) written by a surety authorized to transact business in the state
of Idaho and conditioned for the faithful performance of his duties, with
surety approved by the governor, the premium for which bonds shall be a
charge against the state, to be audited, allowed and paid as are other claims,
out of the state highway fund or from any other funds appropriated
therefor.

SECTION 26. That Section 40-125, Idaho Code, be, and the same is
hereby amended to read as follows:

40-125. STATE HIGHWAY ENGINEER - OATH AND BOND. -
Before entering upon the duties of his office, the state highway engineer
shall take and subscribe to the official oath of office as provided by law and
shall, in addition thereto, swear or affirm that he holds no other public
office, nor any position under any political committee or organization. Such
oath, or affirmation, shall be filed in the office of the secretary of state. The
state highway engineer shall be bonded to the state of Idaho in the time,
form and manner prescribed by chapter 8, title 59, Idaho Code.

SECTION 27. That Section 40-2603, Idaho Code, be, and the same is
hereby amended to read as follows:

40-2603. IDAHO TURNPIKE CONTROL ESTABLISHED - MEMBERS - APPOINTMENT - TERMS - QUALIFICATIONS - EACH
TURNPIKE PROJECT SEPARATE OATHS AND BONDS OF MEMBERS
COMPENSATION - CHAIRMAN DESIGNATED MEETINGS QUORUM - SECRETARY ELECTED. - (a) There is hereby established a
body corporate and politic, with corporate succession, to be known as the
"Idaho Turnpike Control." The control is hereby constituted an
instrumentality exercising public and essential governmental functions, and
the exercise by the control of the powers conferred by this act in the
construction, operation and maintenance of turnpike projects shall be deemed and held to be an essential governmental function of this state.

(b) The "Idaho Turnpike Control" shall be composed of three (3) members for each separate turnpike project as hereinafter defined, to be appointed by the governor, not more than two (2) members at a time shall be of the same major political party. Members shall be appointed for two (2), four (4) and six (6) year terms and shall be successful public spirited men of good character, well informed and interested in the construction and maintenance of toll highways, road systems and bridges, and their selection and appointment shall be made solely with regard to the purposes and the best interests of the various functions of the control. Each member at the time of his appointment shall have been a citizen, resident and taxpayer of the state of Idaho and of the district from which he is appointed for at least five (5) years, and during his tenure of office no member shall hold or occupy any elective or other appointive office, federal, state, county or municipal or any office in any political party.

The governor shall have the power in his discretion to remove any member of the control at any time and to appoint another qualified person in his stead and to fill any vacancy caused by death, resignation, incapacity, removal or other cause.

Each specific turnpike project shall be clearly identified by an appropriate descriptive name and shall be operated as a separate enterprise, each to be supervised by a separate control board of three (3) members as herein provided for; when a turnpike project is proposed, the citizens in the area shall finance by private subscription all surveys necessary to establish its economic feasibility, including the origin and destination counts, engineering surveys and other reports which may be required in order to secure adequate financing; upon firm acceptance by a recognized bonding company or financial institution, or the satisfactory underwriting by private capital, the proposal shall be transmitted to the governor, who shall forthwith select three (3) members to constitute the control board for that specific project, with full authority to carry out the functions enumerated in this "Idaho Turnpike Control Act." The specific toll project for which such control board is created shall bear the cost of all salaries and expenses of the members and the maintenance of the control board office, including clerical help, at no expense to the state of Idaho.

Each member appointed to a control board shall hold office after the expiration of his own term until his successor has been appointed and
qualified. Within fifteen (15) days after the expiration of the term of appointment of each member of the control, the governor shall appoint a successor to serve for a like term. Should any member of the control resign, die, remove from the district from which he was appointed, or upon his removal from office a vacancy shall exist, the governor shall within fifteen (15) days appoint a successor with like qualifications, to serve for the remainder of the term.

Each member of the control shall receive a certificate of appointment from the governor, and before entering upon the discharge of official duties, shall file with the secretary of state the constitutional oath of office, to which and as a part thereof shall be added a declaration of the political party to which said control member belongs, and shall also be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. Each member of the control shall receive compensation at ten dollars per day, for each day while he is in attendance at official meetings of the control and while on official business authorized by the control. Each member shall be reimbursed for his traveling, living and other expenses actually and necessarily incurred while in the performance of his official duties hereunder, provided, however, that no member of said control shall receive per diem in excess of twelve hundred dollars ($1,200.00) for the first fiscal year after this act takes effect, or in excess of one thousand dollars ($1,000.00) per year, for each fiscal year thereafter.
(c) The members of the control shall elect a secretary, not a member of the control, who shall receive such compensation as the control may determine and as may be provided in the budget from time to time. He shall make and carefully preserve full and accurate minutes of all meetings and records of all proceedings and enter the same in the journal of the control. The secretary shall make true copies of all notices directed by the control to be published and the certificates of publication thereof and shall perform such other duties as may be imposed upon him by law or as may be assigned to him by the control.

(d) Before the issuance of any turnpike revenue bonds under the provisions of this act, each member of the control shall execute a surety bond in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The sum of twenty-five thousand dollars ($25,000.00) and the treasurer shall execute a surety bond in the penal sum of fifty thousand dollars ($50,000.00) each surety bond to be conditioned upon the faithful performance of the duties of the office of such member or treasurer, as the case may be, to be executed by a surety company authorized to transact business in the state of Idaho, as surety and approved by the attorney general and filed in the office of the secretary of state.

(e) A control board constituted hereunder shall function until the bonds are fully redeemed and the turnpike project is turned over to the state of Idaho, at which time the governor shall declare the services of the members terminated.

SECTION 28. That Section 41-204, Idaho Code, be, and the same is hereby amended to read as follows:

41-204. COMMISSIONER'S OATH AND BOND. - At the time of taking office the commissioner shall take an oath of office, and give bond in favor of the state of Idaho in the penal sum of not less than twenty-five thousand dollars ($25,000). The bond shall be conditioned upon the faithful and honest performance of the duties of the office of such member or treasurer, as the case may be, to be executed by a surety company authorized to transact business in this state, as surety and approved by the attorney general and filed in the office of the secretary of state.

SECTION 29. That Section 41-206, Idaho Code, be, and the same is hereby amended to read as follows:

41-206. DEPUTIES AND ASSISTANTS. - (1) The commissioner may appoint, employ, fix the compensation of, prescribe and require the duties
of, and discharge such deputies and personnel as the duties of his office may require.

(2) The commissioner shall appoint as a deputy with respect to matters concerning life and disability insurance, a person qualified therefor by experience in such kinds of insurance business or in the supervision thereof by public authority. The commissioner shall appoint as a deputy with respect to matters concerning the other kinds of insurance, another person qualified therefor by experience in such other kinds of insurance business or in the supervision thereof by public authority. The commissioner shall designate one (1) of such deputies as chief deputy.

(3) The deputy commissioners referred to in subsection (2) above shall each give an official bond be bonded in favor of the state of Idaho in the penal sum of not less than ten thousand dollars ($10,000) on either an individual or blanket bond basis, time, form and manner prescribed in chapter 8, title 59, Idaho Code. The surety on the bond shall be a corporate surety authorized to transact such business in this state. The form and amount of the bond and the surety shall be subject to the commissioner's approval. The bond shall be filed with the secretary of state.

(4) The commissioner may contract for and procure on a basis of fee, and without giving such persons any status as an employee of this state, such independently contracting actuarial, technical and other similar professional services as he may from time to time require for the discharge of his duties.

SECTION 30. That Section 41-3502, Idaho Code, be, and the same is hereby amended to read as follows:

41-3502. PROCUREMENT OF OFFICIAL BONDS. — (1) Whenever any official surety bond is to be procured, placed, canceled or renewed with respect to any officer (other than elected constitutional officer), agent or employee of the state of Idaho, or any of its departments, boards, agencies, or institutions, required by law or regulation to give surety bond and the premiums on which are payable from funds of the state, the same shall be so procured, placed, canceled or renewed by the commissioner.

(2) The officer (other than elected constitutional officer), agent, or employee required by law or regulation to give such surety bond shall make application therefor to the commissioner, and the commissioner shall procure the same from authorized insurers, or as a surplus line under chapter 12 of this code, on such basis as he may reasonably deem proper.

(3) If any such bond is thereafter to be canceled, modified, or renewed, the officer (other than elected constitutional officer), agent, or
employee involved, or the official having jurisdiction of such agent or employee, shall request the same in writing delivered to the commissioner, and the commissioner shall promptly attend to such cancelation, modification, or renewal.

SECTION 31. That Section 42-1801, Idaho Code, be, and the same is hereby amended to read as follows:

42-1801. APPOINTMENT, OATH AND BOND OF STATE RECLAMATION ENGINEER. — The state reclamation engineer shall be appointed by the governor for a term of six (6) years commencing as of the first Monday of January, 1943, and thereafter for like terms of six (6) years commencing on the first Monday of January of each such terms of office, and until his successor shall be appointed and qualified in the manner as herein provided, and shall, before entering upon the discharge of the duties of his office, take and subscribe an oath to faithfully discharge the duties of his office, and The state reclamation engineer shall also be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, give an official bond to be approved by the governor in the sum of $10,000. If the office of state reclamation engineer shall be vacated by the incumbent by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment; and the appointee shall hold his office for the balance of the unexpired term of six (6) years and until his successor is appointed and qualified.

SECTION 32. That Section 46-308, Idaho Code, be, and the same is hereby amended to read as follows:

46-308. OFFICERS RESPONSIBLE FOR MONEY OR PROPERTY — BOND. — All officers of the national guard of this state who may be responsible for moneys or public property of the state or of the United States, issued for use in the military service, shall be required to give bond in such sum as the adjutant general, by and with the approval of the governor shall determine, and conditioned upon the proper care, preservation, and safekeeping and accounting for of such property or moneys, or both, entrusted to said officers. Provided, however, the adjutant general, with the approval of the governor, may shall obtain an adequate indemnity bond or bonds in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, covering all or part of the officers so accountable and responsible.

Wherever it shall appear to the satisfaction of the adjutant general that any property of the state or of the United States has not been satisfactorily kept, preserved, or safeguarded, and upon inspection thereof, loss of or
damage to the property shall have been determined to have occurred due to the failure of the responsible officers to properly safeguard, care for or preserve, said property, then the adjutant general upon failure of such responsible officer to pay for said loss or damage shall in the name of the state of Idaho bring action upon the bond given by said responsible officer, and shall collect thereon the full amount of loss or damage. Moneys so collected shall be paid into the treasury of the state, and credited to the general fund, if collected by reason of loss or damage to state property, and shall be disposed of in accordance with the provisions of the applicable federal law and regulations issued thereunder if said moneys are collected by reason of loss or damage to federal property.

SECTION 33. That Section 47-101, Idaho Code, be, and the same is hereby amended to read as follows:

47-101. OFFICE CREATED — APPOINTMENT — TERM OF OFFICE — BOND — SALARY. — The office of inspector of mines for the state of Idaho is hereby created, the same to be filled beginning with the first Monday in January, 1971, by appointment by the governor, subject to confirmation by the senate, to hold office for a term of four (4) years unless removed for cause. The governor shall appoint a person of recognized competence in the mining industry who is qualified to carry out the duties and fulfill the responsibilities of the office of inspector of mines as hereinafter in this chapter specified. The inspector of mines shall be at least thirty (30) years and not over sixty (60) years of age at the time of appointment, a citizen of the United States, and shall have had at least five (5) years practical experience in underground mining, one (1) year of which must have involved special duties and responsibilities directly related to safety and accident prevention therein. Before entering upon the discharge of his duties as such inspector of mines he shall file an official bond in the sum of $5,000, conditioned for the faithful performance of his office, in form and manner as other official bonds of state officers. The inspector of mines shall be bonded in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The governor shall fix the salary of the mine inspector in accordance with the provisions of section 59-508, Idaho Code.

SECTION 34. That Section 54-912, Idaho Code, be, and the same is hereby amended to read as follows:

54-912. BOARD OF DENTISTRY — POWERS AND DUTIES. — The board shall have the following powers and duties:

(a) To ascertain the qualifications and fitness of applicants to practice
dentistry or dental hygiene; to prepare, conduct and grade qualifying examinations; to issue in the name of the department a certificate of qualification to applicants found to be fit and qualified to practice dentistry or dental hygiene.

(b) To prescribe rules and regulations for a fair and wholly impartial method of examination of applicants to practice dentistry or dental hygiene.

(c) In event a dental school be established within the state of Idaho, or dental hygiene be taught at any school, college, institution, university or department thereof within the state of Idaho, to prescribe courses of study for and instruction in dentistry and dental hygiene, the period of study, the instructional facilities, faculty and instructor requirements, and to establish standards of preliminary education requisite to admission to such school, college, university or department thereof and to require satisfactory proof of the requirement of such standards.

(d) To define what shall constitute accepted and approved schools, colleges, institutions, universities or departmen thereof for the teaching of dentistry or dental hygiene and to determine, accept and approve such thereof as comply therewith.

(e) To promulgate such other rules and regulations required by this act or necessary or desirable for its enforcement and administration; to define by regulation the terms unprofessional or flagrant immoral conduct or practices injurious to the public as such terms are used in section 54-924, Idaho Code, and to establish by regulation minimum standards of cleanliness and sanitation; to prescribe and furnish application, certificate, license and other necessary forms.

(f) To inspect or cause to be inspected the offices or operating rooms of all persons licensed under this act.

(g) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of dentistry or dental hygiene and to conduct hearings or proceedings to revoke or suspend certificates of qualification or licenses of persons practicing dentistry or dental hygiene and to revoke or suspend such licenses, provided such hearings and proceedings shall be had in conformance with the provisions of title 67, chapter 52, chapter 52, title 67, Idaho Code, and in lieu of revocation or suspension of licenses, to enter into and establish and enforce consent orders as authorized by section 67-5209(d), Idaho Code, which orders may include
probationary terms. Final decisions of the board shall be reviewable and appealable as provided in title 67, chapter 52, chapter 52, title 67, Idaho Code.

(h) The board shall have power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases and shall be paid from the state board of dentistry fund in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which such disobedience, neglect or refusal occurs, upon application by the board to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena upon making application to the board therefor.

(i) The board shall establish an office at Boise and may appoint an executive secretary who need not be a member of the board or a person licensed to practice dentistry or dental hygiene, and may employ such other personnel as may be necessary to assist the board. The board shall prescribe the duties of such executive secretary and these duties shall include the preparation of all papers and records under this act for the board and the department, and shall include such enforcement activities as to the board may from time to time appear advisable, and such executive secretary shall act for and on behalf of the board in such manner as the board may authorize, keep records, property and
equipment of the board and discharge such other duties as the board may from time to time prescribe. The compensation of such executive secretary or other personnel shall be determined by the board and the executive secretary shall be bonded to the state in the time, form and manner prescribed in chapter 8, title 59, Idaho Code. The board may require such executive secretary to post a good and sufficient bond for faithful performance of his duties in such amount as the board may determine.

(i) To report each year to the association, at its annual meeting, on the status of the state board of dentistry fund and furnish the association a written report on all receipts and expenditures during the preceding year.

SECTION 35. That Section 54-1209, Idaho Code, be, and the same is hereby amended to read as follows:

54-1209. RECEIPTS AND DISBURSEMENTS. — The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate fund to be known as the "professional engineers' fund." Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. All moneys in the "professional engineers' fund" are hereby specifically appropriated for the use of the board. The secretary of the board shall be bonded to the state of Idaho in the time, form and manner prescribed in chapter 8, title 59, Idaho Code. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "professional engineers' fund." The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 54-1205, Idaho Code. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's delegates to annual conventions of, and membership dues to, the National Council of State Boards of Engineering Examiners. Under no circumstances shall the total amount of expenditures approved by the board in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as
herein provided. All warrants on said "professional engineers' fund" shall be
drawn by the state auditor on vouchers by the board and the state board of
examiners.

SECTION 36. That Section 58-124, Idaho Code, be, and the same is
hereby amended to read as follows:

58-124. LAND COMMISSIONER — ASSISTANTS — APPOINTMENT
— DUTIES — SALARY AND EXPENSES — OATH AND BOND — TERM
OF OFFICE. — The state board of land commissioners shall appoint a land
commissioner, who shall have general supervision of all field work, and with
such assistants as the board may appoint, select, locate and appraise all lands
which are now, or may be hereafter, granted to this state by the United
States for any purpose whatever, and who shall perform the other duties as
shall be required of him by the board, or as shall be prescribed by their rules.
He shall be paid a salary of $3,600 per annum and his actual and necessary
expenses while traveling on business of the board. Said land commissioner
and his assistants shall each take the oath of office and may give a bond to
the state of Idaho in the time, form and manner prescribed in chapter 8,
title 59, Idaho Code. Said bonds shall be in such sums as the board may fix,
conditional upon the faithful performance of their duties; said bonds, if required and
given, shall be approved by the board and filed with the secretary of state.
Said assistants shall receive their actual and necessary expenses while
traveling on business for the board. The board may employ necessary clerical
and other assistants for carrying on the business of the state land
department, and fix their compensation. The land commissioner and other
appointees of the board shall hold their respective positions during the
pleasure of the board.

SECTION 37. That Section 59-916, Idaho Code, be, and the same is
hereby amended to read as follows:

59-916. POWERS AND DUTIES OF APPOINTEE. — Any person
elected or appointed to fill a vacancy, after filing his official oath and
qualifying for the state official bond, as prescribed by chapter 8, title 59,
Idaho Code, possesses all the rights and powers, and is subject to all the
liabilities, duties and obligations, of the officer whose vacancy he fills.

SECTION 38. That Section 63-503, Idaho Code, be, and the same is
hereby amended to read as follows:

63-503. OATH — BOND. — Each member of the state tax commission
shall take, subscribe and file with the secretary of state an oath of office in
the form, time and manner prescribed by chapter 4, title 59, Idaho Code.
Each commissioner shall be **bonded to the state of Idaho in the form, time and manner prescribed by chapter 8, title 59, Idaho Code. required to give an official bond in the sum of ten thousand dollars ($10,000.00) that he will well, truly, and faithfully perform all the duties imposed upon him and the commission by law.**

**SECTION 39.** That Section 67-912, Idaho Code, be, and the same is hereby amended to read as follows:

67-912. OFFICIAL BOND. — The secretary of state must be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, in the sum of $2,000, and must receive no fees under the laws of the state until such bond, approved by the governor, is filed with the auditor.

**SECTION 40.** That Section 67-1015, Idaho Code, be, and the same is hereby amended to read as follows:

67-1015. OFFICIAL BOND. — The auditor must be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

**SECTION 41.** That Section 67-1219, Idaho Code, be, and the same is hereby amended to read as follows:

67-1219. DEPUTY TREASURER APPOINTMENT, OATH AND BOND. — The state treasurer may appoint a deputy state treasurer, who shall take the oath as required of his principal, and may perform all the official duties of such principal, being subject to the same regulations and penalties, and for all whose official acts the state treasurer shall be responsible. The state treasurer shall require his deputy to be bonded to the state of Idaho in the time, form and manner prescribed in chapter 8, title 59, Idaho Code; provided that in no event shall the amount of the bond be less than one hundred fifty thousand dollars ($150,000).

**SECTION 42.** That Section 67-1220, Idaho Code, be, and the same is hereby amended to read as follows:

67-1220. OFFICIAL BOND. — The state treasurer must be bonded to the state of Idaho in the time, form and manner prescribed in chapter 8, title 59, Idaho Code; provided that in no event shall the amount of the bond be less than four hundred fifty thousand dollars ($450,000).

**SECTION 43.** That Section 67-1402, Idaho Code, be, and the same is hereby amended to read as follows:
67-1402 OFFICIAL BOND. — The attorney-general must be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, execute an official bond in the sum of $5,000.

SECTION 44. That Section 67-1501, Idaho Code, be, and the same is hereby amended to read as follows:

67-1501. ELECTION, QUALIFICATIONS, OATH AND BOND. — There shall be elected biennially, by the qualified electors of the state, a state superintendent of public instruction, who shall reside at the seat of government, and shall perform such duties as are prescribed by the constitution and laws of the state. No person shall be a candidate for the office of state superintendent who does not hold a valid state or state life certificate, and who is not at the time of nomination a graduate of an approved normal school, college, or university as determined by the state board of education, and is also actively engaged in educational work in the state public schools or in the state educational institutions. Before entering upon the duties of his office, the state superintendent of public instruction shall take and subscribe to the oath prescribed by the constitution. The state superintendent of public instruction shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, and execute a bond in the penal sum of $2,000, payable to the state of Idaho, with sureties to be approved by the governor, conditioned upon the faithful performance of his official duties, and the delivery to his successor of all books, papers, documents or other property belonging to the office. Said bond and oath shall be deposited with the secretary of state.

SECTION 45. That Section 67-1601, Idaho Code, be, and the same is hereby amended to read as follows:

67-1601. APPOINTMENT AND REMOVAL — SALARY AND BOND. — The governor of this state is hereby authorized and directed to appoint a state purchasing agent who may be removed by the governor at his discretion. He shall receive an annual salary of $3,000.00, payable in equal monthly installments, and shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, give an official bond with surety to be approved by the governor in such principal sum as shall be fixed by the governor, conditioned for the faithful performance of his duties.

SECTION 46. That Section 67-1603, Idaho Code, be, and the same is hereby amended to read as follows:

67-1603. APPOINTMENT OF DEPUTY — BOND. — The state
purchasing agent may appoint a deputy, who shall have power to act for him and in his place while absent, which deputy shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. give an official bond with surety to be approved by the governor in such principal sum as shall be fixed by the governor, conditioned for the faithful performance of his duties.

SECTION 47. That Section 67-2405, Idaho Code, be, and the same is hereby amended to read as follows:

67-2405. OTHER DEPARTMENTAL OFFICERS. — In addition to the heads of departments, the following executive and administrative officers enumerated after the name of each department respectively, are hereby created:

In the Department of Agriculture:
   Director of Markets
   Director of Animal Industry
   Director of Plant Industry
   Director of Fairs

In the Department of Law Enforcement:
   Fish and Game Warden

In the Department of Public Health:
   Director of Public Health

In the Department of Public Works:
   Director of Highways

In the Department of Reclamation:
   A deputy State Reclamation Engineer to be appointed by the head of the department, who shall take the oath as required of his principal, and may perform all the official duties of such principal, being subject to the same regulations, and penalties, and for all whose official acts the state reclamation engineer shall be responsible. The state reclamation engineer shall require his deputy to be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. execute an official bond to the state of Idaho in the sum of $5,000.00.

Each of the above named officers shall be under the direction, supervision and control of the head of the respective department to which he is assigned and shall perform such duties as such head of the department shall prescribe.

SECTION 48. That Section 72-902, Idaho Code, be, and the same is
hereby amended to read as follows:

72-902. STATE INSURANCE MANAGER — POWERS AND DUTIES OF STATE INSURANCE MANAGER. — There is hereby created the office of state insurance manager, elsewhere in this chapter referred to as manager, whose duties it shall be to conduct the business of the state insurance fund, and the said manager is hereby vested with full authority over said fund, and may do any and all things which are necessary and convenient in the administration thereof, or in connection with the insurance business to be carried on by the manager under the provisions of this chapter. Said manager shall be appointed by the governor and shall serve during the pleasure of the governor, and shall be bonded in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. give bond for the faithful performance of his duties in an amount to be fixed by the governor and with sureties approved by him.

The state insurance manager may acquire real property as a site for an office building and may construct thereon an office building, or may purchase an office building, and may use for such purposes any moneys in the fund that may be available for investment; provided however, that no acquisition, construction or purchase may be made hereunder without the prior written approval of the board of examiners. Any moneys used pursuant to this section for site acquisition or construction or purchase of an office building shall, when so used, constitute an investment of the fund.

SECTION 49. That Section 72-1335, Idaho Code, be, and the same is hereby amended to read as follows:

72-1335. PERSONNEL. — (a) Subject to other provisions of this act, the director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, employees, and other persons as may be necessary in the performance of his duties under this act. The director may delegate to any such person such power and authority as he deems reasonable and proper for the effective administration of this act, and may, in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code, his discretion bond any person handling moneys or signing checks hereunder, such bond to be paid for out of the employment security administration fund.

(b) (1) Subject only, to the provisions of this act and such additional provisions consistent therewith as the director shall by regulations prescribe, the director is authorized and directed to establish a group pension plan providing retirement, disability, and death benefits for
employees of the employment security agency through the means of group contracts negotiated with an insurer, licensed and qualified to do business under the laws of the state of Idaho, on a competitive basis.

(2) Employees covered by the plan shall include all employees (other than temporary and hourly-rated employees) who are in employee status with the employment security agency on or after the effective date of the plan.

(3) Credited service shall mean all service by employees in the employ of the employment security agency (exclusive of leaves without pay other than military leave) as follows:

(i) Past service rendered prior to the effective date of the plan by employees; for this purpose prior service shall include service in any of the predecessor, component organizations thereof, as determined appropriate by the director on the effective date, and shall also include leave-of-absence for military service occurring within a period of otherwise continuous service in any such predecessor organizations.

(ii) Future service rendered on and after said effective date, except that future service accruals, other than for appointees of the governor, shall terminate at the end of the month within which an employee reaches the age of 65.

(iii) An employee of the agency placed on loan or special duty with other governmental units may be deemed to be in credited service when the costs of continuing credited service are made reimbursable in accordance with agreement approved by the director.

(4) For each year of credited service each employee covered under the plan shall receive a monthly pension commencing upon retirement at or after age 65 and continuing until death, of not less than:

<table>
<thead>
<tr>
<th>Pension as %</th>
<th>Monthly Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>of Earnings</td>
<td></td>
</tr>
<tr>
<td>1%</td>
<td>First $350.00</td>
</tr>
<tr>
<td>2%</td>
<td>Over 350.00</td>
</tr>
</tbody>
</table>

except that with respect to credited service before the effective date of the plan such monthly pension shall be computed at the monthly rate of earnings in effect for the employee as of the effective date of the plan. Appropriate schedules and conditions for early retirement and contingency annuity option shall be included in the insurance contract.
Notwithstanding any other provisions of this section to the contrary, the executive director is authorized and directed to negotiate with the insurer to invest any interest, dividends, earnings, or other moneys accruing to the funds financing the employees’ retirement program with the insurer to purchase additional retirement benefits. The purchase of said additional benefits shall be contingent upon actuarial appraisals of the plan and shall be based on sound actuarial principles. Total retirement benefits to be provided under the program shall meet the requirements of the Internal Revenue Service for integration purposes.

(5) An employee who becomes totally disabled after having completed at least ten (10) years of service will, upon submission of medical evidence satisfactory to the insuring company, be eligible for a disability annuity which, together with any other form of disability pay, will not exceed on a salary bracket basis approximately one-third (1/3) of his average salary for the two-year period immediately preceding the commencement of his disability. Such disablement annuity shall be payable, after a twenty-six (26) week elimination period, until death, recovery, or attainment of age sixty-five (65) (at age sixty-five (65) the employee becomes entitled to his normal retirement pension which has accumulated for service prior to his disablement.)

(6) The cost of past service, future service and disability pensions shall be calculated according to sound actuarial principles. Cost of the plan, including funding of past service pensions which shall be funded over a period of time consistent with good insurance practices, shall be paid from the employment security administration fund established by section 72-1347, Idaho Code, of this act. Payments each year from said fund toward the purchase of future service pensions for employees shall not be less than the aggregate amount contributed during the year by employees. Each employee covered under the plan shall by payroll deduction contribute toward the cost of future service pensions at not less than the following rates:

<table>
<thead>
<tr>
<th>Rate of Monthly Contribution</th>
<th>Monthly Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>3%</td>
<td>First $350.00</td>
</tr>
<tr>
<td>6%</td>
<td>Over 350.00</td>
</tr>
</tbody>
</table>

(7) Upon termination of service, an employee shall receive the refund of his contributions plus interest. A vested employee, as provided in the
insurance contract, who leaves his contributions in the plan will remain entitled to the pension purchased by the employer contributions on his behalf, and all other privileges under the plan.

(8) If an employee dies more than ten (10) years before his normal retirement date, all of his contributions plus interest will be returned to a previously-named beneficiary. The following provisions of this subsection shall be subject to a contingency annuity option. If an employee dies on or after the date ten (10) years prior to his normal retirement date, it will be assumed that he retired on the first day of the month following his date of death, and his beneficiary shall receive, beginning on the assumed retirement date, one hundred twenty (120) monthly pension payments. The amount of monthly pension payable will be based on the credit accrued to that time and the employee's assumed earlier retirement age. If death occurs after retirement but before one hundred twenty (120) monthly pension payments have been made, the monthly pension will be continued to his beneficiary until a total of one hundred twenty (120) monthly payments have been made.

(9) The plan shall become effective on a date agreed upon by the director and the insurer subject to other applicable provisions of the Employment Security Law and the approval of the bureau of employment security, U. S. Department of Labor.

SECTION 50. That Section 72-1346, Idaho Code, be, and the same is hereby amended to read as follows:

72-1346. EMPLOYMENT SECURITY FUND. — (a) Establishment and Control. There is hereby established in the state treasury a special fund, separate and apart from all public moneys or funds of this state, an “Employment Security Fund,” which shall be administered by the director exclusively for purposes of this act. All moneys coming into said fund are hereby perpetually appropriated to the director to be by him administered separate and apart from all other moneys and funds of this state pursuant to the provisions of this act and the Federal Social Security Act. This fund shall consist of all contributions collected pursuant to this act, interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, all earnings of such property or securities, and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposits. The state treasurer shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an
unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the director, shall be promptly forwarded to the state treasurer for immediate deposit in the clearing account. All moneys in the clearing account after clearance thereof, shall, except as herein otherwise provided, be deposited promptly with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Refunds and reimbursements payable pursuant to sections 72-1357, 72-1316(a)(4), Idaho Code, may be paid from the clearing account or the benefit account, except that amounts found to be refundable which were paid into the state employment security administrative and reimbursement fund, shall be paid only out of such latter fund. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state’s account in the unemployment trust fund in the treasury of the United States. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the state treasurer under the direction of the director in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general public depository law of this state; and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund provided for under this act. The director shall give a bond conditioned upon the faithful performance of his duties with respect to the fund in an amount of not less than $15,000.00. The bond shall be approved as to legality and form by the attorney general of this state. All sums recovered for losses sustained by the fund shall be deposited therein.

(c) Withdrawals. Moneys requisitioned by the director through the treasurer from this state’s account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to the
provisions of this act, except that money credited to this state's account pursuant to section 903 of the Federal Social Security Act, as amended, shall be used exclusively as provided in subsection (e) of this section. The director through the treasurer shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof such moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, nor shall such expenditures require the approval of the state board of examiners. All warrants issued for the payment of benefits and refunds shall bear the signature of the director or his duly authorized agent for that purpose. Upon approval and agreement by and between the director and state auditor, amounts in the benefit account may be transferred to a revolving fund established and maintained in a depository bank from which the director may issue checks for the payment of benefits and refunds in accordance with the provisions of this act, and for no other purpose. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in this section, subd. (b). The bond required of the director by this section, subd. (b) shall also be conditioned upon the faithful performance of the director's duties with respect to such revol
ing fund. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving fund referred to herein, after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of funds upon discontinuance of unemployment trust fund. The provisions of subsections (a), (b), and (c) of this section, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all
funds deposited by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys belonging to the employment security fund of this state shall be administered by the director as a trust fund for the purpose of paying benefits under this act, and the director shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such administration; provided, that such moneys shall be invested in accordance with the provisions of the State Depository Law; provided, further, that such investment shall be at all times made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

(e) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Federal Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses incurred for the administration of this act. Such money may be requisitioned and used for the payment of expenses incurred for the administration of this act pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and money is requisitioned after the enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor and provides that the amounts be limited by the following provisions:

(1) Such money may not be obligated after the close of the two-year period which began on the date of the enactment of the appropriation law; and

(2) The amount which may be obligated during any twelve-month period beginning on July 1 and ending on the next June 30 does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Federal Social Security Act, as amended, during the same twelve-month period and the fourteen preceding twelve-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any such fifteen twelve-month periods. For
the purposes of this subsection, amounts used during any twelve-month period beginning on July 1 and ending on the next June 30 shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for the administration of this act during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the fourteenth preceding such period.

SECTION 51. That Section 58-109, Idaho Code, be, and the same is hereby repealed.

SECTION 52. That Section 63-2710, Idaho Code, be, and the same is hereby repealed.

SECTION 53. That Section 67-2413, Idaho Code, be, and the same is hereby repealed.

SECTION 54. That Section 67-2505, Idaho Code, be, and the same is hereby repealed.

SECTION 55. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby repealed.

SECTION 56. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-801, Idaho Code; and to read as follows:

59-801. SHORT TITLE. — This act may be cited as the “Surety Bond Act.”

SECTION 57. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-802, Idaho Code; and to read as follows:

59-802. DEFINITIONS AS USED IN THE SURETY BOND ACT. —

(1) “Commissioner” means the Commissioner of Insurance.

(2) “Employee” means each elected or appointed officer of the state and each officer and employee of an agency; and

(3) “Agency” means each department, institution, board, bureau, commission or committee of the government of state, including state educational institutions, the Supreme Court and district courts, but does not include any political subdivisions of the state.

SECTION 58. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-803, Idaho Code; and to read as follows:

59-803. SURETY BOND REQUIRED. — (1) With the advice of the
head of each agency, and taking into consideration employee duties and responsibilities, the commissioner shall designate individually or by class the employees required to give official bond to the state and the amount of the bond required for each individual or class.

(2) If some other law sets forth an amount in which an employee is to be bonded, the commissioner shall procure a bond in at least the amount set forth in such law, but may require a bond in a greater amount than is set forth in such law if he determines, in accordance with the procedures set forth in subsection (1) above, that it would be in the best interest of the state to require a bond in a greater amount.

(3) The premium on the official surety bonds procured by the commissioner in accordance with sections (1) and (2) above shall be paid from funds appropriated or available for the employer or agency in the manner prescribed in section 41-3503, Idaho Code.

(4) The commissioner shall procure all official bonds for employees, and shall, by negotiations or otherwise, endeavor to purchase the best coverage which can be obtained for the least cost.

SECTION 59. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-804, Idaho Code, and to read as follows:

59-804. SURETY BONDS — TERMS AND CONDITIONS. — (1) Each official bond of an employee shall be payable to the state, and whenever possible, conditioned on honesty and the faithful performance of his duties during the employment or term of office and until his successor is elected or appointed and is qualified, and that he will properly account for all money and property received in his official capacity as an employee. The bond may contain other terms and conditions deemed appropriate by the commissioner to protect the state from loss. The bond shall be executed by a corporate surety company authorized to do business in this state in the amount fixed by the commissioner.

(2) In lieu of individual bonds, the commissioner may elect to provide a schedule or blanket corporate surety bond covering all or any group of employees whenever the premiums would be less than the aggregate of premiums chargeable under individual coverage. Any blanket or schedule bond provided shall contain all terms and conditions required in subsection (1).

(3) All official bonds of employees shall be approved by the governor and shall be approved as to form and legal sufficiency by the attorney
general and shall be filed with the secretary of state without cost, except that the bond of the secretary of state or a certified copy of any master, blanket or schedule bond including the secretary of state shall be filed with the state auditor.

SECTION 60. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-805, Idaho Code, and to read as follows:

59-805. BOND REQUIRED UNDER OTHER LAWS. — Whenever an employee is required by another law to post bond or surety as a prerequisite to entering employment or assuming office, the requirement is met when bond coverage is provided for the office or position under provisions of the Surety Bond Act.

SECTION 61. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-806, Idaho Code, and to read as follows:

59-806. BONDS OF COUNTY OFFICERS — APPROVAL, FILING, AND RECORDING — INSUFFICIENCY OF SURETIES — PROCEEDINGS. — It shall be the duty of the board of county commissioners of each county to periodically, but not less than twice yearly, review, examine, and inquire into the sufficiency of all of the official bonds given or to be given by any county or precinct officer as required by law, and if it shall appear that any one (1) or more of the sureties, or any of them, has died, moved from the state, become insolvent, or from any other cause has become incompetent or insufficient surety on such bond, the said board of county commissioners shall cause such county or precinct officer to be summoned to appear before the board on a day to be named in said summons, not less than three (3) nor more than ten (10) days after date, to appear and show cause why he should not be required to give a new bond with sufficient security, and if at the appointed time he shall fail to satisfy said board as to the sufficiency of the present security, an order shall be entered of record by said board requiring such county or precinct officer to file in the office of the county clerk within ten (10) days, a new bond to be approved as required by law, and in the event such bond is found not sufficient, and a new bond is not filed as ordered, the fact shall be certified by the board of county commissioners to the district court of the county, and shall also be certified to the prosecuting attorney of the county and it shall thereupon become the duty of the prosecuting attorney to cause a hearing to be had in said district court for the purpose of adjudicating and declaring a vacancy in such office, in the
event the district court determines, after a hearing, that the bond is in fact insufficient, and such officer fails within five (5) days after the district court has so found to file a new bond with sufficient surety as required by law. Upon the entry of such decree of vacancy it shall thereupon become the duty of the appointing power to fill such office in the manner provided by law.

SECTION 62. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-807, Idaho Code, and to read as follows:

59-807. INSUFFICIENCY OF SURETIES — ADDITIONAL BOND. — The additional bond must be in such penalty as directed by the court, judge, board, officer or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

SECTION 63. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-808, Idaho Code, and to read as follows:

59-808. ORIGINAL BOND NOT DISCHARGED BY ADDITIONAL BOND. — In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

SECTION 64. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-809, Idaho Code, and to read as follows:

59-809. RECORD OF OFFICIAL BONDS. — Official bonds, after having been approved, must be recorded in a book kept for that purpose, and entitled “Record of Official Bonds.”

SECTION 65. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-810, Idaho Code, and to read as follows:

59-810. SURETIES FOR LESS THAN PENAL SUM. — When the penal sum of any bond required to be given amounts to more than one thousand dollars ($1,000), the sureties may become severally liable for portions of not less than five hundred dollars ($500) thereof, making in the
aggregate at least two (2) sureties for the whole penal sum; and if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bonded for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable.

SECTION 66. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-811, Idaho Code, and to read as follows:

59-811. CUSTODY OF OFFICIAL BONDS — CERTIFIED COPIES GIVEN. — Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

SECTION 67. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-812, Idaho Code, and to read as follows:

59-812. FORM OF BOND. — All official bonds must be in form joint and several, and made payable to the state of Idaho in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

SECTION 68. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-813, Idaho Code, and to read as follows:

59-813. EXTENT OF SURETIES' LIABILITY. — Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

SECTION 69. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-814, Idaho Code, and to read as follows:

59-814. EXTENT OF SURETIES' LIABILITY — DUTIES SUBSEQUENTLY IMPOSED. — Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to
the execution of such bond, and such condition must be expressed therein.

SECTION 70. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-815, Idaho Code, and to read as follows:

59-815. SUITS BY PERSONS INJURED. — Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

SECTION 71. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-816, Idaho Code, and to read as follows:

59-816. SUCCESSIVE SUITS BY PERSONS INJURED. No such bond is void on the first recovery of a judgment thereon; but suit may be afterward brought, from time to time, and judgment recovered thereon by the state of Idaho, or by any person to whom a right of action has accrued, against such officer and his sureties, until the whole penalty of the bond is exhausted.

SECTION 72. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-817, Idaho Code, and to read as follows:

59-817. DEFECTS IN BOND NOT TO AFFECT LIABILITY. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the state, or a party interested, and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become, and were, included as sureties in such bond.

SECTION 73. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-818, Idaho Code, and to read as follows:

59-818. ACTION ON EITHER BOND. The officer and his sureties are liable to any party injured by the breach of any condition of any official bond, after the execution of the additional bond, upon either or both bonds,
and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

SECTION 74. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-819, Idaho Code, and to read as follows:

59-819. SEPARATE JUDGMENT ON BOND. — If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively, but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one (1) of the suits, together with the costs of both suits.

SECTION 75. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-820, Idaho Code, and to read as follows:

59-820. CONTRIBUTION BETWEEN SURETIES. — Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover, in any court of competent jurisdiction, of the sureties on the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid respectively.

SECTION 76. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-821, Idaho Code, and to read as follows:

59-821. DISCHARGE OF SURETIES BY NEW BOND. — Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond, with sufficient sureties, in like form, penalty, and conditions, and to be approved and filed, as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

SECTION 77. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-822, Idaho Code, and to read as follows:
59-822. VACANCIES – BOND OF APPOINTEE. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinafter provided.

SECTION 78. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-823, Idaho Code, and to read as follows:

59-823. RELEASE OF SURETIES. — Any surety on the official bond of a city, district, precinct, county or state officer may be relieved from liabilities thereon afterward accruing by complying with the provisions of the three (3) sections following.

SECTION 79. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-824, Idaho Code, and to read as follows:

59-824. RELEASE OF SURETIES – APPLICATION FOR RELEASE. — Such surety must file with the judge, court, board, officer or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterward arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

SECTION 80. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-825, Idaho Code, and to read as follows:

59-825. RELEASE OF SURETIES – SERVICE OF STATEMENT. — A copy of the statement must be served on the officer named in such official bond and due return or affidavit of service made thereon as in other cases.

SECTION 81. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-826, Idaho Code, and to read as follows:

59-826. RELEASE OF SURETIES – OFFICE DECLARED VACANT. — In twenty (20) days after the service of such notice the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer has, before that time, given good and ample surety for the discharge of all his official duties as required originally.
SECTION 82. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-827, Idaho Code, and to read as follows:

59-827. RELEASE OF SURETIES – REMAINING SURETIES LIABLE. – The release, discharge, voluntary withdrawal, or incompetency, of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

SECTION 83. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-828, Idaho Code, and to read as follows:

59-828. RELEASE OF SURETIES – ACCRUED LIABILITIES UNAFFECTED. – No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order releasing him from liability, but such legal proceedings may be had therefor in all respects as though no such order had been made.

SECTION 84. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-829, Idaho Code, and to read as follows:

59-829. ACTION ON BONDS – LIS PENDENS. – When an action is commenced in any court in this state for the benefit of the state, to enforce the penalty of, or to recover money upon, an official bond or obligation, or any bond or obligation executed in favor of the state of Idaho, or of the people of this state, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant or one (1) or more of the defendants (designating whom), and made payable to the people of this state, or to the state of Idaho, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk receiving such affidavit must certify, to the recorder of the county in which such real estate is situated, the names of the parties to the action, the name of the court in which the action is pending and the amount claimed in the complaint, with the date of the commencement of the suit.

SECTION 85. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-830, Idaho Code, and to read as follows:
59-830. LIS PENDENS — FILING AND RECORDING — EFFECT — CLERK’S FEES. — Upon receiving such certificate, the county recorder must endorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate belonging to the defendant or to one (1) or more of the defendants, situated in any county in which such certificate is so filed, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

SECTION 86. That Chapter 8, Title 59, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 59-831, Idaho Code, and to read as follows:

59-831. NOTIFICATION OF EXPIRATION OR FAILURE TO FURNISH OFFICIAL BOND — COLLECTION AND DEPOSIT OF UNEARNED PREMIUMS. — In addition to the other duties prescribed by law, it shall be the duty of the secretary of state, in the case of official bonds of state officers or employees, and the county recorder, in the case of official bonds of county officers or employees, to notify the governor or the board of county commissioners, as the case may be, at the expiration of any official bond or of the failure of any person to furnish the official bond required by law. It shall be the duty of such officers, within their respective jurisdictions, to collect any unearned premiums that may accrue for any reason and cause the same to be deposited in the state or county treasury, as the case may be, to the credit of the fund out of which the same was originally paid.

SECTION 87. 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 March 18, 1971.
CHAPTER 137
(S. B. No. 1007, As Amended, As Amended in the House)

AN ACT
RELATING TO PROFESSIONAL GEOLOGISTS; PROVIDING GENERAL PROVISIONS; PROVIDING DEFINITIONS USED WITHIN THE ACT; CREATING A STATE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS; PROVIDING THE QUALIFICATIONS OF BOARD MEMBERS; PROVIDING THE COMPENSATION AND PAYMENT OF EXPENSES OF THE BOARD; PROVIDING FOR THE REMOVAL OF MEMBERS FROM THE BOARD AND THE FILLING OF VACANCIES; PROVIDING FOR THE ORGANIZATION AND MEETINGS OF THE BOARD; PROVIDING POWERS AND DUTIES OF THE BOARD; PROVIDING FOR THE METHOD OF DISPOSITION OF FUNDS OF THE BOARD; REQUIRING THAT CERTAIN RECORDS AND REPORTS BE KEPT BY THE BOARD; REQUIRING THE BOARD TO PRINT A ROSTER OF ALL REGISTERED GEOLOGISTS; PROVIDING THE MEANS FOR APPLICATION FOR REGISTRATION AND PROVIDING REGISTRATION FEES; PROVIDING FOR EXAMINATIONS PRIOR TO REGISTRATION; PROVIDING CERTIFICATES OF REGISTRATION; PROVIDING FOR THE RENEWAL OF CERTIFICATES OF REGISTRATION; PROVIDING FOR THE REISSUANCE OF PUBLIC CERTIFICATION; PROVIDING THAT GEOLOGICAL WORK CONTRACTED BY STATE OR ITS POLITICAL SUBDIVISIONS SHALL BE BY REGISTERED GEOLOGISTS, WITH EXCEPTIONS FOR ENGINEERS AND ARCHITECTS; PROVIDING FOR DISCIPLINARY ACTIONS AND REVOCATION OF CERTIFICATES; PROVIDING FOR APPEALS FROM THE ACTION OF THE BOARD; PROVIDING PENALTIES; PROVIDING EXAMINATIONS; AND PROVIDING SEVERABILITY.

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

SECTION 1. In order to safeguard life, health, and property, and to promote the public welfare, the practice of geology in this state is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice, or offer to practice, geology for others in this state, as defined in the provisions of this act, or to use in connection with his name or otherwise assume, or advertise any title or description
tending to convey the impression that he is a geologist, unless such person has been duly registered or exempted under the provisions of this act. The right to engage in the practice of geology shall be deemed a personal right, based on the qualifications of the individual as evidenced by his certificate of registration, and shall not be transferable.

SECTION 2. (a) Within the intent of this act, it is recognized that "geology" is a fundamental science dealing with the physical earth, the organisms, materials and structures composing the earth and the physical forces affecting the earth insofar as these factors may influence the safety and public welfare.

The terms, "geology and professional geology", within the intent of this act, shall include any professional service such as consultation, investigation, evaluation, planning, and mapping, or responsible supervision of such activities in connection with any public or private project, as governed by the principles of geology, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service is rendered in a professional capacity and requires the application of geologic principles and data.

A person shall be construed to practice or offer to practice geology, within the meaning and intent of this act, who practices any branch of the profession of geology; or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a geologist, or through the use of some other title implies that he is a geologist or that he is registered under this act; or who holds himself out as able to perform, or who does perform any geological services or work recognized as geology.

Further, within the intent of this act, it is recognized that the information derived from geological studies may be utilized in various associated fields or sciences concerned with the safety and public welfare.

Registration under this act, however, does not qualify the registrant to practice professionally in any field or science other than geology.

(b) The term "geologist", within the intent of this act, shall mean a person who is qualified by reason of his knowledge of principles of geology, the physical sciences, and mathematics acquired by education and practical experience, to engage in the practice of professional geology and the allied geosciences of geophysics and geochemistry.

(c) The term "professional geologist", as used in this act, shall mean a person who has been duly registered by the state board of registration for professional geologists.
(d) The term "board" as used in this act shall mean the state board of registration for professional geologists, hereinafter provided by this act.

SECTION 3. A state board of registration for professional geologists is hereby created whose duty it shall be to administer the provisions of this act. The board shall consist of five (5) professional geologists, who shall be appointed by the governor from among nominees recommended by the Idaho association of professional geologists, and shall have the qualifications required by section 4 of this act.

The board shall be comprised of members of the following professional categories: one (1) academic geologist, one (1) government geologist, two (2) salaried company geologists and one (1) independent or consultant geologist.

The members of the first board shall be appointed within ninety (90) days after the approval of this act to serve for the following terms: one (1) member for one (1) year, one (1) member for two (2) years, one (1) member for three (3) years, one (1) member for four (4) years, and one (1) member for five (5) years, from the date of their appointment.

Each member of the board shall take, subscribe and file the oath required by chapter 4, title 59, Idaho Code, before entering upon the duties of his office. On the expiration of the term of any member his successor shall be appointed in like manner by the governor for a term of five (5) years.

Members of the board shall hold office until the expiration of the term for which they were appointed and until their successors have been appointed and qualified.

SECTION 4. Members of the initial board shall be citizens of the United States and residents of this state, and they shall have been engaged in the practice of geology for at least twelve (12) years, shall have been in responsible charge of important geologic work for at least five (5) years, and shall be geologists as qualified under the provisions of this act as herein provided. Responsible charge of geologic teaching may be construed as responsible charge of important geologic work. Each appointee to subsequent boards shall be a geologist registered under the provisions of this act.

SECTION 5. Each member of the board shall receive as compensation for his services such sum as the board shall from time to time fix, but not exceeding twenty-five dollars ($25.00) for each day actually spent in attending to the work of the board or any of its committees and for the time spent in necessary travel; and, in addition thereto, he shall be reimbursed
within legal limitations for all actual travel, incidental and clerical expense
necessarily incurred in carrying out the provisions of this act.

SECTION 6. The governor may remove any member of the board for
misconduct, incompetency, neglect of duty, or any other sufficient cause.
Vacancies in the membership of the board shall be filled for the unexpired
term by appointment by the governor as provided in section 3 of this act.

SECTION 7. The board shall hold a meeting within thirty (30) days
after its members are first appointed and thereafter shall hold at least one (1)
regular meeting each year. The by-laws may provide for such additional
regular meetings as necessary and for special meetings. Notice of all meetings
shall be given as may be provided in the by-laws. The board shall annually
elect a chairman, a vice chairman and a secretary, who shall be members of
the board, and they may provide for an assistant secretary who need not be a
member of the board. Three (3) members shall constitute a quorum.

SECTION 8. The board shall have the power to adopt and amend rules
and regulations which may be reasonably necessary for the proper
performance of its duties and the administration of this act and the
regulation of proceedings before the board. It shall adopt and have an
official seal. It shall have power to provide an office, office equipment and
facilities and such books and records as may be reasonably necessary for the
proper performance of its duties.

In carrying into effect the provisions of this act, the board, under the
hand of its chairman and the seal of the board, may request the attendance
of witnesses and the production of such books, records and papers as may be
required at any hearing before it, and for that purpose the board may
request a district court to issue a subpoena for any witness or a subpoena
duces tecum to compel the production of any books, records or papers.
Subpoenas shall be directed to the sheriff of any county in the state of Idaho
where such witness resides or may be found. Subpoenas shall be served and
returned in the same manner as subpoenas in a criminal case. The fees and
mileage of the sheriff and witnesses shall be the same as that allowed in
district court criminal cases, which fees and mileage shall be paid from any
funds in the state treasury available therefor in the same manner as other
expenses of the board are paid. Disobedience of any subpoena issued by the
district court or the refusal by any witness in failing to testify concerning
any matter regarding which he may lawfully be interrogated, or the failure to
produce any books, records or papers, shall constitute a contempt of the
district court of any county where such disobedience or refusal occurs, and
said court, or any judge thereof, by proceedings for contempt in said court, may, if such contempt be found, punish said witness as in any other case of disobedience of a subpoena issued from such court or refusal to testify therein.

SECTION 9. The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate fund to be known as the “professional geologists’ fund”. Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the “professional geologists’ funds”. The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 5 of this act. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act. Under no circumstances shall the total amount of expenditures approved by the board in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided. All warrants on the “professional geologists’ funds” shall be drawn by the state auditor on vouchers by the board and approved by the state board of examiners.

SECTION 10. The board shall keep a record of its proceedings and register of all applications for registration, which register shall show (a) the name, the age and residency of each applicant; (b) the date of application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) whether or not an examination was required; (f) whether the applicant was rejected; (g) whether a certificate of registration was granted; (h) the dates of the action by the board; and (i) such other information as may be deemed necessary by the board.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein; and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

Annually the board shall submit to the governor a report of its
transactions of the preceding year, and shall also transmit to him a complete
statement of the receipts and expenditures of the board, attested by
affidavits of its chairman and its secretary.

SECTION 11. A roster showing the names and places of business of all
registered professional geologists shall be published by the secretary of the
board during the month of December each year. Copies of this roster shall be
mailed to each person so registered, placed on file with the secretary of state,
and furnished to the public upon request.

SECTION 12. (a) Except as herein otherwise expressly provided, no
applicant may be registered until he has successfully passed an examination
given by or under the supervision of the board, nor shall an applicant be
registered having habits of character that would justify revocation or
suspension of registration, as provided in section 19 of this act. The
following shall be considered as minimum evidence that the applicant is
qualified to take an examination for registration as a professional geologist:

(b) Completion of thirty (30) semester units in courses in geological
science leading to a degree in the geological sciences of which at least
twenty-four (24) units are in third or fourth year, and/or graduate courses;
and have at least seven (7) years of professional geological work which shall
include either a minimum of three (3) years of professional geological work
under the supervision of a registered geologist; or, wherein the applicant has
been under the direct supervision of an individual acceptable to the board,
or, wherein the applicant has demonstrated five (5) years of progressive
experience in responsible charge of geological work that is acceptable to the
board.

Each year of undergraduate study in the geological sciences shall count
as one-half (½) year of training up to a maximum of two (2) years, and each
year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year
toward meeting the requirement in this category, provided that the
total annual teaching experience includes six (6) semester units of third or
fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching,
individually, or in any combination thereof, shall in no case exceed a total of
four (4) years towards meeting the requirement for at least seven (7) years of
professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by his having
performed the work in a responsible position, as the term "responsible
"position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

Three (3) references, two (2) of whom are to be registered geologists, must be filed with the application for registration.

(c) Wherein an applicant, with a specific record of at least ten (10) years of lawful practice in geologic work, of which at least five (5) years have been in responsible charge of important geologic work of a grade and character which indicates that the applicant is competent to practice geology and being otherwise qualified, or through compliance with subsection (b) of this section, the board, at its discretion, shall waive subsection (a) of this section, until one (1) year following the effective date of this act and issue a license to practice geology in the state of Idaho.

(d) A person holding a certificate of registration to engage in the practice of geology, on the basis of comparable licensing requirements, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, who, in the opinion of the board, meets the requirements of this act, based on verified evidence may, upon application, be registered without further examination.

Any person having the necessary qualifications prescribed in this act to entitle him to registration shall be eligible for such registration although he may not be practicing his profession at the time of making his application.

SECTION 13. Applications for registration shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's education and a detailed summary of his geologic work.

The registration fee for professional geologists shall be fifty dollars ($50.00), thirty-five dollars ($35.00) of which shall accompany the application for examination, and the remaining fifteen dollars ($15.00) to be paid prior to issuance of the certificate.

Should the board deny the issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

SECTION 14. Written and/or oral examinations shall be held at such time and place as the board shall determine. If examinations are required on fundamental geologic subjects (such as are ordinarily given in college curricula), the applicant may be permitted to take this part of the professional examination prior to his completion of the requisite years of
experience in geologic work, and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit toward the applicant's complete professional examination for a period not to exceed ten (10) years.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to supervise geologic projects so as to insure the safety of life, health and property. A candidate failing his first examination may apply for re-examination at the expiration of six (6) months without filing a new application and shall be entitled to such re-examination on payment of an additional fee of fifteen dollars ($15.00). A candidate who fails on re-examination, must file a new application before he can again be admitted to examination, and such new application shall not be filed prior to one (1) year following the date of the last examination taken by the applicant; provided, however, that it shall be unlawful for a candidate failing any examination to practice professional geology under subsections (b) and (c) of section 22 of this act.

SECTION 15. The board shall issue a certificate of registration upon payment of registration fee as provided for in this act, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this act. Certificates of registration shall show the full name of the registrant, shall give a serial number, and shall be signed by the chairman and the secretary of the board under seal of the board.

The issuance of a certificate of registration by the board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional geologist, while the said certificate remains unrevoked or unexpired.

All drawings, specifications, reports, or other geologic papers or documents involving geologic work as defined in section 2 of this act which shall have been prepared or approved by a registered geologist or a subordinate employee under his direction for the use of or for delivery to any person or for public record within this state shall be signed by him or be impressed with said seal or the seal of a non-resident practicing under the provisions of section 22 of this act, either of which shall indicate his responsibility for them.

Each registrant hereunder may, upon registration, obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional geologist".
It shall be unlawful for any person to affix his signature, stamp or seal to any document, after the certificate of the registrant named thereon has expired or been suspended or revoked, unless said certificate shall have been renewed, reinstated, or reissued.

SECTION 16. Certificates of registration shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be mailed at least one (1) month in advance of the date of expiration of said certificate. Renewal may be effected at any time prior to June 30, the payment of a renewal fee to be fixed by the board at not more than fifty dollars ($50.00). The failure on the part of any registrant to renew his certificate annually in the month of June as required above shall not deprive such a person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of June shall be increased twenty per cent (20%) for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the renewal fee for each year delinquent, but in no event more than one hundred dollars ($100.00).

SECTION 17. A new certificate of registration, to replace any certificate lost, destroyed or mutilated, may be issued, subject to the rules of the board. A charge of ten dollars ($10.00) shall be made for such issuance.

SECTION 18. This state and its political subdivisions, such as county, city, or legally constituted boards, districts, commissions or authorities, shall contract for geological services only with persons registered under this act, provided further that nothing in this section or act shall be construed to prevent registered professional engineers from lawfully practicing soils mechanics, foundation engineering, geological engineering, and other professional engineering, as provided in chapter 12, title 54, Idaho Code, and licensed architects from lawfully practicing architecture as provided in chapter 3, title 54, Idaho Code.

SECTION 19. (1) The board shall cause to have prepared and shall adopt a code of ethics which shall be made known in writing to every registrant and applicant for registration under this act, and which shall be published in the roster provided for in section 11 of this act. Such publication shall constitute due notice to all registrants. The board may
revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of such revisions or amendments.

The board shall have the power to suspend, refuse to renew, or revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration.

(b) Any gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist.

(c) Any felony or any crime involving moral turpitude.

(2) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to be the person, or persons making them and shall be filed with the secretary of the board.

(3) All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after date on which they shall have been preferred.

(4) The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such registrant, at least thirty (30) days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and/or by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense.

If, after such a hearing, a majority of the board vote in favor of sustaining the charges, the board shall suspend, refuse to renew, or revoke the certificate of registration of such registered geologist. The board, for reasons it may deem sufficient, may reissue a certificate of registration to any person whose certificate has been revoked.

SECTION 20. Any person who shall feel aggrieved by any action of the board in denying, suspending, or revoking his certificate of registration may appeal therefrom to the district court of Ada county. Such appeal shall be perfected by filing with the clerk of the district court, within thirty (30) days after the action of the board of which complaint is made, a petition setting forth briefly the action complained of and wherein the petitioner has been deprived of any legal right. The petition shall constitute the complaint, and summons may be issued thereon directed to the board and served upon the chairman or secretary thereof. The pleading thereafter shall conform to the practice in other civil proceedings. The court in its decree may sustain or
reverse the action of the board and direct the board to take such further or other action as the court may deem just and proper in the premises.

SECTION 21. Any person who shall practice, or offer to practice, professional geology for others in this state without being registered in accordance with the provisions of this act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked certificate of registration or practice at any time during a period the board has suspended or revoked certificate of registration or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor.

The attorney general of this state or any assistant designated by him shall act as legal advisor of the board; and all violations of the provisions of this act shall be prosecuted by the prosecuting attorney of the county or counties in which the violations of the act may be committed.

SECTION 22. This act shall not be construed to prevent or to affect:

(a) The practice of any profession or trade for which a license is required under any law of this state; or

(b) The practice of professional geology by a person not a resident of and having no established place of business in this state, when such practice does not exceed in the aggregate more than thirty (30) days in any calendar year and provided such person is duly licensed or registered to practice such profession in a state in which the requirements and qualifications for obtaining a certificate of registration or license are not lower than those specified in this act for obtaining the registration required for such work, upon examination, and provided further that such non-resident shall file with the board, on or before entering the state for commencing such work, a statement giving his name, residence, the number of his license or certificate of registration, and by what authority issued, and upon the completion of the work, a statement of the time engaged in such work within the state; or

(c) The practice of a person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty (30) days in any calendar year the profession of geology, if he shall have filed with the board an application for a certificate of registration and shall have paid the
fee required by this act; provided, that such a person is legally qualified by
registration to practice said profession in his own state or country in which
the requirements and qualifications for obtaining a certificate of registration
are not lower than those specified in this act. Such practice shall continue
only for such time as the board requires for the consideration of the
applicant for registration; or

(d) The work of an employee or a subordinate of a person holding a
certificate of registration under this act, or an employee of a person
practicing lawfully under subsection (a), (b) or (c) of this section, provided
that such work is done under the direct responsibility, checking, and
supervision of a person holding a certificate of registration under this act or a
person practicing lawfully under subsection (a), (b) or (c) of this section; or

(e) The practice of officers and employees of the United States while
engaged within this state in the practice of the profession of geology for said
government; or

(f) This act shall not be construed to prevent or to affect the practice
of geology by staff members of a corporation or a company as long as data
acquired by them is for internal corporate or company use only.

SECTION 23. If any provisions of this act or the application thereof to
any person or circumstances is held invalid, such invalidity shall not affect
other provisions or applications of the act, which can be given effect without
the invalid reason provisions or applications, and to this end the provisions
of this act are declared to be severable.

Approved March 18, 1971.

CHAPTER 138
(H. B. No. 200)

AN ACT
RELATING TO DECEDENTS' ESTATES; AMENDING SECTION 14-113,
IDAHO CODE, BY STRIKING REFERENCE TO ADMINISTRATION
OF THE WIFE'S ESTATE DYING INTESTATE WITH COMMUNITY
PROPERTY; AMENDING SECTION 14-114, IDAHO CODE, BY
PROVIDING THAT WHERE A PERSON DIES INTESTATE OWNING
COMMUNITY PROPERTY EXCLUSIVELY OR WHERE A PERSON
DIES TESTATE WITH SEPARATE AND/OR COMMUNITY
PROPERTY AND LEAVES IT BY WILL ENTIRELY TO THE SURVIVING SPOUSE, THE ESTATE MAY BE ADMINISTERED USING AN ABBREVIATED PROCEDURE INVOLVING A PETITION TO THE COURT, A HEARING NOT LESS THAN THIRTY DAYS LATER, POSTING OF NOTICE, A DECREE OF DISTRIBUTION, A FILING FEE, ASSUMPTION OF INDEBTEDNESS BY THE SURVIVOR, AND THAT ANY INTERESTED PARTY MAY PETITION TO HAVE THE PROCEDURE CHANGED TO A FORMAL PROBATE.

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

SECTION 1. That Section 14-113, Idaho Code, be, and the same is hereby amended to read as follows:

14-113. DEVOLUTION OF COMMUNITY PROPERTY. — Upon the death of either husband or wife, one-half (½) of all the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, in favor only of the survivor, the children, grandchildren or parents of either spouse, or one (1) or more of such persons, subject also to the community debts: provided, that not more than one-half (½) of the decedent's half of the community property may be left by will to a parent or parents, unless limited to an estate for life or less; and provided further than any part of decedent's share in excess of the unencumbered appraised value of $25,000 twenty five thousand dollars ($25,000) may be disposed of as the testator sees fit.

In case no such testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall go to the survivor, subject to the community debts, the family allowance and the charges and expenses of administration; provided, however, that no administration of the estate of the wife shall be necessary if she dies intestate, except as provided in section 14-114.

SECTION 2. That Section 14-114, Idaho Code, be, and the same is hereby amended to read as follows:

14-114. WIFE DYING INTESTATE — ADMINISTRATION OF COMMUNITY PROPERTY — ADMINISTRATION OF SEPARATE PROPERTY OF DECEDED TO SURVIVING SPOUSE AS SOLE LEGATEE OR DEVISEE. — Where the wife either spouse has heretofore died intestate and hereafter upon the death of the wife either spouse intestate leaving community property, or upon the death of either spouse
leaving separate and/or community property, and when such decedent shall
by last will and testament provide that the surviving spouse shall be the sole
legatee or devisee of any and all property of such decedent, the surviving
husband, spouse, or any other person having derived title to any of such
community property or any interest therein from, through or under such
surviving husband spouse shall file a verified petition in the probate court,
setting up the marriage, acquiring of property during coverture, a
showing that it was community property, and the death of the wife spouse
intestate, or the separate and/or community property of such decedent, and
that the surviving spouse is the sole heir or the sole legatee or devisee by the
last will and testament of such decedent. The petition must be accompanied
by the original and one (1) copy of the last will and testament of said
decedent if such decedent died testate. Upon the filing of such petition, the
probate judge must make an order directing all persons interested to appear
before him, at a time and place specified, not less than ten days from the
time of making such order, to show cause why such petition should not be
granted. The the clerk of the probate court must thereafter give notice
thereof requiring all persons interested to appear before the judge of said
court or the magistrate assigned to hear said petition, at a time and place
specified, not less than thirty (30) days from the time of giving such notice,
to show cause why such petition should not be granted, by causing a notice
to be posted in a public place at or near the courthouse main door in the
county where such court is held, setting forth the time and place appointed
for the hearing, of the hearing thereof, and the nature of the petition. Such
notice must be posted for at least seven thirty (30) days before such hearing.
If upon such hearing, or at such time or times to which such hearing may be
postponed, it shall appear that the parties were duly married, that the
property was acquired as community property during coverture, that the
same was community property, and that the wife spouse had died intestate,
or that the property was the separate and/or community property of the
decedent and the petitioner is the sole and only heir or that by last will and
testament such decedent bequeathed all of such property to the surviving
spouse, the probate judge or magistrate shall make a decree to that effect,
and thereupon a certified copy of such decree shall be recorded, and
thereafter shall have the same effect as a final decree of distribution so
recorded. A fee of $7.50 twenty three dollars ($23) shall be paid to the
probate court for the filing of said petition, which fee shall be in full for all
such proceedings, including the furnishing of the certified copy of the
decree.
Where proceedings have been instituted under the provisions of this section, the proceedings for the determination of the amount of transfer and inheritance tax, and/or additional tax to absorb the federal estate tax credit shall be in conformance with the provisions of section 15-1405, Idaho Code.

Provided further, however, that where either spouse shall elect to proceed under the provisions of this section, such spouse will assume and be liable for any and all indebtedness that might be a claim against the estate of said decedent.

Any interested party, whether as heir, creditor or otherwise, may, during the thirty (30) day period, petition to change such proceedings to a formal probate in the event such interested party contends that for any reason the last will and testament filed was invalid or was not in fact the last will and testament of said decedent, or for any reason objects to the petition filed in such proceeding.

Approved March 18, 1971.

CHAPTER 139
(H. B. No. 76)

AN ACT
RELATING TO THE ESTABLISHMENT AND OPERATION OF A MENTAL HEALTH PROGRAM AND FACILITY AT THE IDAHO STATE PENITENTIARY; PROVIDING FOR THE JOINT OPERATION, ADMINISTRATION, AND MAINTENANCE OF SUCH PROGRAM AND FACILITY BY THE STATE BOARD OF HEALTH AND THE STATE BOARD OF CORRECTION; DECLARING THE PURPOSE OF SUCH PROGRAM AND FACILITY TO BE THAT OF PROVIDING CUSTODY; EVALUATION, AND TREATMENT BOTH FOR DANGEROUSLY MENTALLY ILL PRISONERS SERVING SENTENCES AT THE IDAHO STATE PENITENTIARY, AND FOR DANGEROUSLY MENTALLY ILL PERSONS; DEFINING DANGEROUSLY MENTALLY ILL PERSONS; AUTHORIZING THE STATE BOARD OF HEALTH ACTING IN CONJUNCTION WITH THE STATE BOARD OF CORRECTION TO ESTABLISH RULES AND REGULATIONS REGARDING THE ADMITTANCE OF SAID DANGEROUSLY MENTALLY ILL PRISONERS INTO SAID
PROGRAM AND FACILITY; REQUIRING AN ORDER FROM A DISTRICT COURT OR MAGISTRATE'S DIVISION THEREOF ADMITTING DANGEROUSLY MENTALLY ILL PERSONS INTO SAID PROGRAM AND FACILITY, AND PROVIDING FOR A RIGHT OF APPEAL.

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

SECTION 1. The state board of health and the state board of correction shall by agreement establish and operate jointly a mental health program for the limited purpose of providing custody, evaluation, and treatment both for dangerously mentally ill prisoners serving sentences at the Idaho state penitentiary and for dangerously mentally ill persons. For the purposes of this act, the state board of health and the state board of correction shall by agreement jointly establish, operate, and maintain a mental health facility to be located at the Idaho state penitentiary. Such program and facility shall be identifiably separate and apart from those functions, programs, and facilities maintained by the state board of correction for the ordinary prison population but shall be located physically within the confines of the Idaho state penitentiary.

SECTION 2. For purposes of this act "dangerously mentally ill person" shall mean a person who is found by a court of competent jurisdiction pursuant to any lawful proceeding:

(a) to be in such mental condition that he is in need of supervision, evaluation, treatment, and care; and

(b) to present a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; and

(c) to be dangerous to such a degree that a more secure custodial facility is required than that deemed appropriate for most involuntarily committed mentally ill persons.

SECTION 3. Dangerously mentally ill prisoners serving sentences at the Idaho state penitentiary may be received into said facility for treatment in accordance with rules and regulations adopted by the state board of health acting in conjunction with the state board of correction. No court order admitting said dangerously mentally ill prisoners into such facility shall be required.

SECTION 4. No dangerously mentally ill person not a prisoner in the Idaho state penitentiary may be received into such facility unless so ordered
by a district court or a magistrate’s division thereof. There shall be an immediate right of appeal to the district court from all such orders issued by a magistrate’s division of the district court. Appeals from all such orders issued by a district court shall be in accordance with law.

Approved March 18, 1971.

CHAPTER 140
(H. B. No. 190, As Amended)

AN ACT
REPEALING SECTION 67-2912, IDAHO CODE; AMENDING CHAPTER 3, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 54-312, IDAHO CODE, PROVIDING FOR A FIVE MAN BOARD OF ARCHITECTURAL EXAMINERS; AMENDING CHAPTER 3, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 54-313, IDAHO CODE, PROVIDING FOR THE TERMS OF OFFICE OF SAID BOARD; AMENDING CHAPTER 3, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-314, IDAHO CODE, PROVIDING FOR THE FILLING OF VACANCIES ON SAID BOARD; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-2912, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 3, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 54-312, Idaho Code, and to read as follows:

54-312. ARCHITECTS – BOARD OF EXAMINERS. – The board of architectural examiners to be designated by the commissioner of law enforcement pursuant to section 67-2903, Idaho Code, shall consist of five (5) members, each of whom shall be an architect, and shall have been a resident of and a lawfully practicing architect within the state of Idaho for a period of at least five (5) years next before his appointment.

SECTION 3. That Chapter 3, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 54-313, Idaho Code, and to read as follows:
54-313. BOARD OF ARCHITECTURAL EXAMINERS — CONTINUANCE OF PRESENT BOARD. — The members of the board of architectural examiners in office at the date this act becomes effective shall continue in office until the expiration of their respective terms, subject to the provisions of this act.

The regular term of office of a member shall begin as of the first Monday immediately following the date of his appointment, and, for terms commencing after February 1, 1971, shall continue for five (5) years thereafter and until his successor shall have been appointed and accepted such appointment. A member appointed to fill a vacancy occasioned otherwise than by expiration of a term shall serve the unexpired term of his predecessor. No members shall be appointed for a period exceeding two (2) consecutive terms. Any member who has served two (2) consecutive terms may be reappointed after a lapse of five (5) years from the termination date of his last term.

A vacancy in membership shall occur and be declared by the commissioner of the department of law enforcement whenever the regular term of a member expires or whenever a member dies, resigns, or is mentally or physically incapable of acting, or neglects or refuses to act, or otherwise ceases to have the qualifications of a member.

SECTION 4. That Chapter 3, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 54-314, Idaho Code, and to read as follows:

54-314. FILLING VACANCIES ON BOARD. — Prior to the expiration of the regular term of a member or upon the occurrence or declaration of a vacancy in membership upon the board of architectural examiners, the commissioner of law enforcement shall in writing notify the officers of the professional society thereof, and request said society, within sixty (60) days thereafter, to recommend three (3) architects with the qualifications for membership for each appointment to be made to said board or for each vacancy. Said recommended architects shall be selected by the officers or members of said society in such manner as shall be determined by the society and shall be certified by the secretary of the society to the commissioner within such sixty (60) days. The commissioner shall appoint one (1) of the recommended architects to fill the membership of or vacancy on the board of architectural examiners; provided, however, that if no recommendation be made within the time aforesaid, the commissioner may appoint any architect qualified for membership. The commissioner shall
notify the appointee of his appointment and the appointee shall qualify by filing his acceptance with the commissioner.

SECTION 5. This act shall be in full force and effect on and after July 1, 1971.

Approved March 18, 1971.

CHAPTER 141
(H.B. No. 218, As Amended in Senate)

AN ACT
AMENDING SECTION 25-2621, IDAHO CODE, RELATING TO THE EXTERMINATION OF PESTS, BY PROVIDING FOR AN ANNUAL TAX LEVY ON PROPERTY WITHIN PEST CONTROL DISTRICTS, PROVIDING FOR THE APPOINTMENT OF DISTRICT COMMISSIONERS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-2621, Idaho Code, be, and the same is hereby amended to read as follows:

25-2621. EXTERMINATION DISTRICTS. The board of commissioners of any county in the state may create special extermination districts in the county for the extermination of agricultural pests infesting any such district, may levy an annual tax, not exceeding ten cents ($0.10) on each one hundred dollars ($100) of assessed valuation of all property within such district, may appoint three (3) commissioners to govern the affairs of the pest control district or may and to require the landowners in such extermination district to either exterminate such agricultural pests on their own lands in such district within a specified time, or to pay the cost of exterminating them if the same are exterminated by agents of the county district after failure of the landowner to perform such duty within the time limited in any notice to such owner. Such cost, however, shall not exceed fourteen dollars ($14.00) for each forty (40) acre tract. Such extermination district may be established in any precinct in the county. Before the same shall be established, however, it shall be necessary that a petition be filed with the clerk of the board of commissioners requesting the creation of the same, which petition shall be signed by at least a majority of the agricultural landowners in precincts containing less than one hundred (100) such
landowners, and by at least fifty (50) such landowners in precincts containing more than one hundred (100) such landowners. The commissioners shall order a public hearing on such petition at a time and place to be fixed in such order, of which hearing notice shall be given in such manner as the commissioners may order, which time, however, shall not be less than five (5) days from the giving of the said notice. After such hearing, said board may by order create such extermination district, fix its boundaries, provide for an extermination program in such district and create the necessary machinery to carry out such program.

SECTION 2. This act shall be in full force and effect on and after July 1, 1971.

Approved March 18, 1971.

CHAPTER 142
(H. B. No. 150)

AN ACT
AMENDING TITLE 72, CHAPTER 13, IDAHO CODE, BY AMENDING CERTAIN CONTRIBUTION AND BENEFIT PROVISIONS, ELECTION OF COVERAGE PROVISIONS, AND PERSONAL ELIGIBILITY PROVISIONS, AND AMENDING PROVISIONS DEALING WITH RECIPROCAL AGREEMENTS WITH OTHER STATES AND THE FEDERAL GOVERNMENT, AND DEFINING CERTAIN TERMS; AMENDING SECTION 72-1304, IDAHO CODE, TO EXEMPT SERVICES PERFORMED IN THE EMPLOY OF THE OPERATOR OF A FARM OR A GROUP OF FARM OPERATORS IF SUCH FARMERS OR OPERATORS PRODUCE MORE THAN ONE-HALF THE COMMODITY WITH RESPECT TO WHICH SUCH SERVICE IS PERFORMED AND PROVIDING THAT THE EXEMPTION IS NOT APPLICABLE WITH RESPECT TO SERVICES IN CONNECTION WITH COMMERCIAL CANNING AND FREEZING OR PERFORMED IN CONNECTION WITH ANY AGRICULTURAL OR HORTICULTURAL COMMODITY AFTER ITS DELIVERY TO A TERMINAL MARKET FOR DISTRIBUTION FOR CONSUMPTION, AND DEFINING THE TERMS "UNMANUFACTURED STATE" AND "TERMINAL MARKET"; AMENDING SECTION 72-1315, IDAHO
CODE, TO PROVIDE THAT THE TERM "COVERED EMPLOYER" INCLUDES ONE WHO EMPLOYS AT LEAST ONE INDIVIDUAL FOR ONE PORTION OF THE DAY IN EACH OF TWENTY DIFFERENT CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY ADDING A NEW SECTION 72-1315A, IDAHO CODE, DEFINING THE TERM "COST REIMBURSEMENT EMPLOYER"; AMENDING SECTION 72-1316, IDAHO CODE, BY STRIKING SUBSECTION (B) OF SUBSECTION (a)(6), AND STRIKING SUBSECTION (7) OF SUBSECTION (a), INSERTING A NEW SUBSECTION (a)(7) TO PROVIDE EXEMPTION FOR SERVICES SOLELY RELATED TO RELIGIOUS ACTIVITIES PERFORMED IN THE EMPLOY OF A CHURCH OR AN ORGANIZATION OPERATED PRIMARILY FOR RELIGIOUS PURPOSES IF SUCH ORGANIZATION IS OPERATED OR PRINCIPALLY SUPPORTED BY A CHURCH, EXEMPTING SERVICES PERFORMED IN A PUBLIC OR PAROCHIAL SCHOOL WHICH IS NOT AN INSTITUTION OF HIGHER EDUCATION, OR IF AN INSTITUTION OF HIGHER EDUCATION IS DEVOTED PRIMARILY TO PREPARATION OF A STUDENT FOR THE MINISTRY OR TO BECOME A MEMBER OF RELIGIOUS ORDER, AND EXEMPTING SERVICE PERFORMED BY A MINISTER IN THE EXERCISE OF HIS MINISTRY OR A MEMBER OF A RELIGIOUS ORDER IN THE EXERCISE OF DUTIES OF SUCH ORDER AND EXEMPTING SERVICES PERFORMED IN A FACILITY CONDUCTED TO REHABILITATE INDIVIDUALS WHOSE EARNING CAPACITY IS IMPAIRED OR WHICH PROVIDE REMUNERATIVE WORK FOR SUCH IMPAIRED INDIVIDUALS WHO CANNOT BE ABSORBED IN THE COMPETITIVE LABOR MARKET IF SUCH INDIVIDUAL IS BEING REHABILITATED OR RECEIVING REMUNERATIVE WORK, EXEMPTING SERVICES PERFORMED AS PART OF AN UNEMPLOYMENT RELIEF WORK PROGRAM ASSISTED OR FINANCED IN WHOLE OR IN PART BY FEDERAL OR STATE AGENCIES OR POLITICAL SUBDIVISIONS THEREOF BY AN INDIVIDUAL RECEIVING SUCH WORK RELIEF, BY ADDING SUBSECTION (a)(12) EXEMPTING SERVICE PERFORMED IN THE EMPLOY OF A SCHOOL BY A STUDENT ENROLLED AND ATTENDING CLASSES AT SUCH SCHOOL, BY
ADDING SUBSECTION (a)(13) EXEMPTING SERVICE PERFORMED IN THE EMPLOY OF A HOSPITAL BY A PATIENT, BY ADDING TO SUBSECTION (b) OF SECTION 72-1316, IDAHO CODE, FOLLOWING THE WORD "PAID" AND BEFORE THE WORD "UNDER" THE FOLLOWING WORDS "OR WAS REQUIRED TO BE PAID THE PREVIOUS YEAR", AMENDING SUBSECTION (d) OF SECTION 72-1316, IDAHO CODE, BY ADDING A NEW SUBSECTION TO PROVIDE THAT EVEN THOUGH AN INDIVIDUAL MEETS THE EXEMPTIONS OF SUBSECTION (d), HIS SERVICES WILL BE COVERED IF HE.PERFORMS SERVICE AS AN AGENT DRIVER OR COMMISSIONED DRIVER IN DISTRIBUTING CERTAIN ENUMERATED PRODUCTS, OR IF A TRAVELING OR CITY SALESMAN ON A FULL-TIME BASIS IN THE SOLICITATION ON BEHALF OF, AND THE TRANSMISSION TO HIS PRINCIPAL OF CERTAIN ENUMERATED ORDERS, BY ADDING A NEW SUBPARAGRAPH (4) TO SUBSECTION (e) PROVIDING THAT COVERED EMPLOYMENT INCLUDES SERVICE WITHIN THE UNITED STATES, THE VIRGIN ISLANDS, OR CANADA IF NOT COVERED UNDER SPECIFIED UNEMPLOYMENT COMPENSATION LAWS IF SERVICE IS DIRECTED IN THIS STATE, BY ADDING A NEW SUBSECTION (f) TO INCLUDE IN THE TERM "COVERED EMPLOYMENT" SERVICES OF A CITIZEN OF THE UNITED STATES PERFORMED OUTSIDE OF THE UNITED STATES IN THE EMPLOY OF AN AMERICAN EMPLOYER IF CERTAIN ENUMERATED CONDITIONS ARE MET, AND DEFINING THE TERM "AMERICAN EMPLOYER"; AMENDING SECTION 72-1316A, IDAHO CODE, BY STRIKING SUBSECTION (a)(2) AND INSERTING A NEW SUBSECTION (a)(2) TO EXCLUDE SERVICES PERFORMED IN THE EMPLOY OF A SCHOOL BY A STUDENT REGULARLY ATTENDING CLASSES AT SUCH SCHOOL AND SERVICES PERFORMED BY A PATIENT, STUDENT NURSE, OR MEDICAL INTERN OF A HOSPITAL, AND SERVICES PERFORMED IN A HOSPITAL, IN A STATE PRISON OR CORRECTIONAL INSTITUTION BY INMATES THEREOF; AMENDING TITLE 72, CHAPTER 13, IDAHO CODE, BY ADDING A NEW SECTION 72-1322A, DEFINING THE TERM "HOSPITAL"; AMENDING TITLE 72, CHAPTER 13, IDAHO CODE, BY ADDING A NEW SECTION 72-1322B, DEFINING THE TERM "INSTITUTION
OF HIGHER EDUCATION"; AMENDING SUBSECTION (b)(1) OF SECTION 72-1328, BY STRIKING THE FIGURES "$3,600" AND IN LIEU THEREOF INSERTING "$4,200" AND IN THE AMOUNT SPECIFIED IN THE FEDERAL UNEMPLOYMENT TAX ACT; AMENDING SECTION 72-1344, IDAHO CODE, SUBSECTION (a)(3), BY STRIKING THE REMAINDER OF SAID SUBSECTION FOLLOWING THE WORDS "THE FEDERAL GOVERNMENT IS PAYABLE" AND BY INSERTING IN LIEU THEREOF A NEW SENTENCE REQUIRING THE DIRECTOR TO PARTICIPATE IN WAGE COMBINING PLANS APPROVED BY THE SECRETARY OF LABOR AS PROVIDED IN SECTION 72-3304 (a)(9)(B), FEDERAL UNEMPLOYMENT TAX ACT, AND PERMITTING THE DIRECTOR TO ENTER INTO SUCH WAGE COMBINING PLANS OUTSIDE THE SCOPE OF THE FEDERAL ACT WHERE PROVISIONS FOR REIMBURSEMENT TO THE EMPLOYMENT SECURITY FUND FOR SUCH BENEFITS PAID ARE INCLUDED; AMENDING SECTION 72-1349, IDAHO CODE, BY STRIKING SUBSECTION (e) AND INSERTING A NEW SUBSECTION (f) TO PROVIDE FOR THE FINANCING OF BENEFITS PAID TO EMPLOYEES OF NONPROFIT ORGANIZATIONS PERMITTING SAID ORGANIZATIONS TO PAY TO THE UNEMPLOYMENT FUND THE AMOUNT OF REGULAR BENEFITS AND ONE-HALF THE EXTENDED BENEFITS PAID IN LIEU OF PAYMENT AS PROVIDED IN SUBSECTIONS (a), (b), (c) AND (d) OF THIS SECTION IF ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF SUCH NONPROFIT ORGANIZATION AND PROPORTIONING SAID BENEFITS WHERE TWO OR MORE EMPLOYERS ARE INVOLVED, AND PROVIDING FOR A MEANS OF ELECTION TO PAY IN THIS MANNER, AND PROVIDING THAT SUCH AN ELECTION MUST CONTINUE FOR AT LEAST TWELVE MONTHS AND UNTIL TERMINATED, AND PROVIDING THE MEANS WHEREBY TERMINATION MAY BE EFFECTED AND REQUIRING THE DIRECTOR TO NOTIFY SUCH NONPROFIT ORGANIZATIONS OF ANY DETERMINATION AFFECTING ITS STATUS AS AN EMPLOYER, AND PROVIDING FOR AN APPEAL FROM SAID DETERMINATION, AND PROVIDING THE MEANS FOR PAYMENT IN LIEU OF CONTRIBUTIONS PURSUANT TO THE PROVISIONS OF THIS SUBSECTION AND AUTHORIZING THE DIRECTOR AT HIS DISCRETION TO REQUIRE A SURETY
BOND TO INSURE PAYMENT OF SAID PAYMENTS AND AUTHORIZING SAID NONPROFIT ORGANIZATIONS TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS IN ADVANCE OF ACTUAL BILLING FOR PAYMENT COSTS, AND AUTHORIZING THE DIRECTOR TO TERMINATE SUCH ORGANIZATIONS' ELECTION TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS WHEN SAID ORGANIZATION IS DELINQUENT IN MAKING PAYMENTS, AND PROVIDING THAT SAID DELINQUENT EMPLOYERS SHALL BE SUBJECT TO THE PENALTIES PROVIDED IN SECTION 72-1354, IDAHO CODE, AND TO THE COLLECTION PROVISIONS OF SECTION 72-1355, IDAHO CODE, AND PROVIDING THAT SAID ORGANIZATION MAY APPEAL ANY DETERMINATION AFFECTING ITS STATUS AS AN EMPLOYER ACCORDING TO THE PROVISIONS OF SECTION 72-1368 (f), (g), (h), (i), IDAHO CODE; AMENDING SECTION 72-1350, IDAHO CODE, TO EXCLUDE COST REIMBURSEMENT EMPLOYERS FROM THE STANDARD RATE OF CONTRIBUTIONS PROVIDED IN SAID SECTION; AMENDING SECTION 72-1351, IDAHO CODE, SUBSECTION (b) TO PROVIDE THAT THE PORTION OF BENEFITS PAID TO MULTISTATE CLAIMANTS, WHICH EXCEED THE AMOUNT OF BENEFITS THAT WOULD HAVE BEEN CHARGED HAD ONLY IDAHO WAGES BEEN USED IN PAYING THE CLAIM, SHALL NOT BE CHARGED TO THE EMPLOYER'S ACCOUNT FOR EXPERIENCE RATING PURPOSES, AND ALSO PROVIDING THAT BENEFITS PAID PURSUANT TO AN EXTENDED BENEFIT PROGRAM SHALL NOT BE CHARGED TO AN EMPLOYER'S ACCOUNT FOR EXPERIENCE RATING PURPOSES AND EXCLUDING COST REIMBURSEMENT EMPLOYERS FROM EXPERIENCE RATING; AMENDING SECTION 72-1352, IDAHO CODE, SUBSECTION (a), TO PROVIDE THAT NOTWITHSTANDING THE PROVISIONS OF (b)(1) AND (2) OF SAID SUBSECTION, THE COVERAGE OF AN EMPLOYER MAY NOT BE TERMINATED IF HE IS OR WAS SUBJECT TO THE PROVISIONS OF THE FEDERAL UNEMPLOYMENT TAX ACT DURING THE CURRENT OR PRECEDING CALENDAR YEAR AND BY AMENDING SUBSECTION (c) OF SAID SECTION 72-1352 TO PROVIDE THAT A POLITICAL SUBDIVISION OF THE STATE MAY ELECT TO COVER SERVICES OF EMPLOYEES OF
Hospitals and Institutions of Higher Education operated by such political subdivisions electing such coverage shall make payments in lieu of contributions by providing that the director shall prescribe the manner and frequency of such payments, and further providing that payments in lieu of contributions will be equal to the full amount of regular benefits paid plus one-half of extended benefits paid which are attributable to the service and employ of such political subdivision and providing a manner in which election of such coverage may be made, and providing that the election may exclude those services as provided in section 72-1316, Idaho Code, and providing the manner in which such election may be terminated and by adding a new subsection (d) to such section providing that benefits payable to the employees covered by the provisions of this section shall be on the same benefit formula and eligibility conditions as for all other employees; amending section 72-1366, Idaho Code, by amending subsection (e), to provide that the director shall waive the able to work, available for suitable work, and seeking work requirements for each week claimant is attending training under provisions of section 72-1312 (a), Idaho Code, by adding a new subsection (o) providing that benefits paid for service defined in section 72-1349(e), 72-1316A, 72-1352(c) shall be payable the same as compensation payable for other service subject to this act except that a benefit claimant shall not be entitled to benefits based on certain enumerated services performed for institutions of higher education, and adding a new subsection (p) to provide that no individual is eligible to receive benefits in two successive benefit years unless he has performed services subsequent to the beginning of the first of said benefit years and earned an amount of not less than three times his weekly benefit amount; and providing an effective date.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1304, Idaho Code, be, and the same is hereby amended to read as follows:

72-1304. AGRICULTURAL LABOR. - (a) The term “agricultural labor” includes all services performed:

1. On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

2. In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land or of brush and other debris left by a hurricane if the major part of such service is performed on a farm.

3. In connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

4. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning, freezing, or dehydrating in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

5. In the employ of a group of farm operators (or a cooperative organization of such operators) in the performance of service described in subsection (a)(4), but only if such operators produced more than one-half of the commodity with respect to which such service is performed.

6. The provisions in (a)(4) and (a)(5) shall not be deemed to be
applicable with respect to service performed in connection with commercial canning, freezing, or dehydrating, or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(b) As used in subsection (a), the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(c) For purposes of subsection (a), the term “unmanufactured state” means retention of its original form and substance.

(d) For purposes of subsection (a), the term “terminal market” means a place of business to which products are shipped in a sorted, graded, packaged condition, ready for immediate sale.

SECTION 2. That Section 72-1315, Idaho Code, be, and the same is hereby amended to read as follows:

72-1315. COVERED EMPLOYER. — The term “covered employer” means:

(a) An employer as defined in section 72-1320, who, in any calendar quarter in either the current or preceding calendar year after June 30, 1967, pays or becomes liable to pay for services in covered employment wages of $300.00 or more, or for some portion of a day in each of twenty (20) different calendar weeks, whether or not consecutive, in either the current or preceding calendar year employed at least one (1) individual (irrespective of whether the same individual was in employment in each such day).

(b) Any employer (whether or not an employer at the time of acquisition) who acquires the organization, trade, or business or substantially all the assets thereof, of another who at the time of such acquisition was a covered employer.

SECTION 3. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 72-1315A, Idaho Code, and to read as follows:

72-1315A. COST REIMBURSEMENT EMPLOYER. — The term “cost reimbursement employer” means a covered employer who is eligible and elects to reimburse the fund for proportionate benefit cost in lieu of contributions as provided in section 72-1349 (f), Idaho Code.

SECTION 4. That Section 72-1316, Idaho Code, be, and the same is hereby amended to read as follows:
72-1316. COVERED EMPLOYMENT. — (a) The term "covered employment" means an individual's entire service, including service in interstate commerce, performed by him for wages or under any contract of hire, written or oral, express or implied, except —

(1) Agricultural labor, as defined by section 72-1304, Idaho Code;
(2) Service performed as domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;
(3)(A) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father, mother, brother or sister;
(B) Service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;
(4) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this act except that, to the extent that the Congress of the United States shall permit states to require any instrumentality of the United States to make payments into a fund under a state unemployment compensation or insurance law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other covered employers, persons, individuals, and services; provided, that if this state shall not be certified for any year by the secretary of labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentality with respect to such year shall be refunded by the director from the employment security fund in the same manner and within the same period as is provided in section 72-1357, Idaho Code, with respect to contributions erroneously collected;
(5) Service performed in the employ of any state other than Idaho, or any political subdivision thereof, or any instrumentality of the foregoing which is wholly owned by such other states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by chapter 23, subtitle C of the Federal Internal Revenue Code of 1954;
(6) Service performed in the employ of:
(A) any public institution or instrumentality which acquires its operating funds primarily through direct or indirect taxation, including but not limited to, counties, municipalities, highway districts, drainage districts, cemetery districts, and school districts; provided, however, that service performed in the employ of irrigation districts and soil conservation districts shall be considered covered employment;
(B) a children's home or eleemosynary hospital, not part of the net earnings of which inures to the benefit of any private shareholder or individual; and
(C) a fraternal benefit society organized or licensed under the provisions of chapter 30 of title 41.

(7) Service performed in the employ of a corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is commercial in nature and in direct competition with commercial businesses, or engaged in carrying on propaganda, or otherwise attempting to influence legislation; Service performed:
(A) In the employ of (1) a church or convention or association of churches, solely in religious activities, or (2) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or
(B) In the employ of a public or parochial school which is not an institution of higher education, or if an institution of higher education it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or
(C) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or
(D) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or
providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(E) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(8) Service with respect to which unemployment compensation or insurance is payable under an unemployment compensation system established by an Act of Congress other than the Social Security Act;

(9) Service performed as a student nurse in the employ of a hospital or nurses’ training school by an individual who is enrolled and is regularly attending courses in a nurses’ training school chartered or approved pursuant to the state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school chartered or approved pursuant to state law;

(10) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution; and

(A) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(11) Service covered by an election duly approved by the agency charged with the administration of any other state or federal employment compensation or unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code, during the effective period of such election.

(12) Service performed in the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college;

(13) Service performed in the employ of a hospital by a patient during the time that he is a patient of such hospital;

(b) Notwithstanding any of the other provisions of this section, services shall be deemed to be in covered employment if with respect to such
services a tax is required to be paid or was required to be paid the previous year pursuant to the provisions of the federal unemployment tax act imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act under chapter 23 of the Federal Internal Revenue Code of 1954, as amended.

(c) Services covered by an election pursuant to section 72-1352, Idaho Code, and services covered by an election duly approved by the director in accordance with an arrangement pursuant to section 72-134, Idaho Code, shall be deemed to be covered employment during the effective period of such election.

(d) Services performed by an individual for remuneration shall, for the purposes of the Employment Security Law, be covered employment:

1. Unless it is shown:
   (A) That the worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact, and
   (B) That the worker is engaged in an independently established trade, occupation, profession, or business;

2. Even though such individual meets the exemption of subsection (d)(1)(A) and (B) but performs services:
   (A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages, or laundry or dry cleaning services for his principal;
   (B) As a traveling or city salesman engaged upon a full-time basis in the solicitation on behalf of, and the transmission to his principal (except for side line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(e) The term "covered employment" shall include an individual's entire service, performed within or both within and without this state,

1. If the service is localized in this state; or
2. If the service is not localized in any state but some of the service is performed in this state and (A) the individual's base of operations, or, if there is no base of operations, then the place from which such service is
directed or controlled, is in this state, or (B) the individual's base of
operations or place from which such service is directed or controlled is
not in any state in which some part of the service is performed but the
individual's residence is in this state.
(3) Service shall be deemed to be localized within a state if
(A) the service is performed entirely within such state; or
(B) the service is performed both within and without such state,
but the service performed without such state is incidental to the
individual's service within the state, for example, is temporary or
transitory in nature or consists of isolated transactions.
(4) The term "covered employment" shall include an individual's
service, wherever performed within the United States, the Virgin
Islands, or Canada, if (A) such service is not covered under the
unemployment compensation law of any other state, the Virgin Islands,
or Canada, and (B) the place from which the service is directed or
controlled is in this state.
(f) The term "covered employment" shall include the services of an
individual who is a citizen of the United States, performed outside the
United States, (except in Canada or the Virgin Islands) in the employ of an
American employer (other than service which is deemed "covered
employment" under the provisions of subsection (e) of this section or the
parallel provisions of another state's law); if
(1) The employer's principal place of business in the United States is
located in this state; or
(2) The employer has no place of business in the United States; but
(A) the employer is an individual who is a resident of this state; or
(B) the employer is a corporation which is organized under the
laws of this state; or
(C) the employer is a partnership or a trust and the number of the
partners or trustees who are residents of this state is greater than
the number who are residents of any other state; or
(3) None of the criteria of provisions of (1) or (2) of this subsection (e)
are met but the employer has elected coverage in this state, or the
employer having failed to elect coverage in any state, the individual has
filed a claim for benefits based on such service, under the law of this
state;
(4) An "American employer" for purposes of this subparagraph means
a person who is:
(A) an individual who is a resident of the United States; or
(B) a partnership if two-thirds or more of the partners are residents of the United States; or
(C) a trust if all of the trustees are residents of the United States; or
(D) a corporation organized under the laws of the United States or of any state;

(5) For purposes of this subsection (f) the term "United States" means the states, the District of Columbia, and the Commonwealth of Puerto Rico.

SECTION 5. That Section 72-1316A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316A. STATE EMPLOYEES — WHEN COVERED. — (a) On and after July 5, 1959, the term "covered employment" in addition to the definition contained in section 72-1316 (a) shall include an individual's entire service for wages when performed for and paid by the state of Idaho, excluding the following:

(1) Elective officials.
(2) Members of the faculties of state and public schools, colleges, or universities. Service performed in the employ of (A) a school, college, or university, if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university; (B) a hospital if such service is performed by a patient, student nurse, or medical intern of such hospital; (C) a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.
(3) Physicians, dentists, student nurses, or other professional specialists in institutions or attached to departments of the government employed on a part time, irregular, or fee basis.

SECTION 6. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 72-1322A, Idaho Code, and to read as follows:

72-1322A. HOSPITAL DEFINED. — The term "hospital" means any institution which has been licensed by, certified, or approved by the state board of health as a hospital.

SECTION 7. That Chapter 13, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 72-1322B, Idaho Code, and to read as follows:
72-1322B. INSTITUTION OF HIGHER EDUCATION. -- For purposes of this act, "institution of higher education" means an educational institution which

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; and

(b) Is legally authorized in this state to provide a program of education beyond high school; and

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation.

SECTION 8. That Section 72-1328, Idaho Code, be, and the same is hereby amended to read as follows:

72-1328. WAGES. — (a) The term "wages" means all remuneration for personal services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director.

(b) The term "wages" shall not include:

(1) For the purposes of sections 72-1349, 72-1350, and 72-1351, Idaho Code, that part of the remuneration which, after remuneration equal to $3,609.00 four thousand two hundred dollars ($4,200) or the amount of taxable wage base specified in the federal unemployment tax act has been paid to an individual by a covered employer with respect to covered employment in this state, or with respect to employment under the unemployment compensation or insurance law of any other state during any calendar year, is paid to such individual by such covered employer or his predecessor during any such calendar year.

(A) The amount of any payment made after June 30, 1955, (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employer which makes provision generally for individuals performing service for him (or for such individuals generally and their dependents) or for a class or classes
of such individuals (or for a class or classes of such individuals and
their dependents), or (on) account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical or hospitalization
expenses in connection with sickness or accident disability, or (iv) death;
(B) The amount of any payment made after June 30, 1955, by an
employer to an individual performing service for him (including
any amount paid by an employer for insurance or annuities, or
into a fund, to provide for any such payment) on account of
retirement;
(C) The amount of any payment on account of sickness or
accident disability, or medical or hospitalization expenses in
connection with sickness or accident disability, made after June
30, 1955, by an employer to, or on behalf of, an individual
performing services for him after the expiration of six (6) calendar
months following the last calendar month in which the individual
performed services for such employer;
(D) The amount of any payment made after June 30, 1955, by an
employer to, or on behalf of, an individual performing services for
him or his beneficiary (i) from or to a trust described in section
401 (a) of the Federal Internal Revenue Code which is exempt
from tax under section 501 (a) of the Federal Internal Revenue
Code at the time of such payment unless such payment is made to
an individual performing services for the trust as remuneration for
such services and not as a beneficiary of the trust, or (ii) under or
to an annuity plan which, at the time of such payments, meets the
requirements of section 401 (a)(3), (4), (5), and (6) of the Federal
Internal Revenue Code;
(E) The amount of any payment made by an employer (without
deduction from the remuneration of the individual in its employ)
of the tax imposed upon an individual in his employ under section
3101 of the Federal Internal Revenue Code with respect to service
performed after June 30, 1955; or
(F) Dismissal payments before June 30, 1955, which the employer
is not legally required to make.

SECTION 9. That Section 72-1344, Idaho Code, be, and the same is
hereby amended to read as follows:

72-1344. RECIPROCAL ARRANGEMENTS AND COOPERATION.
(a) The director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

1. Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states, (A) in which any part of such individual's service is performed, or (B) in which such individual has his residence, or (C) in the employer maintains a place of business, provided, with respect to subsection (a)(1) of this section, there is in effect, as to such services, an election by an employer with the acquiescence of such individual approved by the agency charged with the administration of such state's unemployment compensation or unemployment insurance law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within each state;

2. Potential rights to benefits accumulated under the unemployment compensation or unemployment insurance laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the employment security fund.

3. Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation or unemployment insurance law of another state or of the federal government, shall be deemed to be wages for covered employment for the purpose of determining his rights to benefits under this act, and wages for covered employment, on the basis of which an individual may become entitled to benefits under this act, shall be deemed to be wages or services on the basis of which unemployment compensation or unemployment insurance under such law of another state or of the federal government is payable; but no such arrangement shall be entered into unless it contains provisions for reimbursements to the employment security fund for such of the benefits paid under this act upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for covered employment as the director finds will be fair and reasonable as to all affected interests; and the director shall participate in any wage combining plan or its later
modifications that the secretary of labor may approve as provided in section 3304 (a)(9)(B), federal unemployment tax act. Other arrangements outside the scope of the federal plan may be entered into where provisions for reimbursement to the employment security fund for such benefits paid are included. Such provisions must be fair and reasonable to all affected interests; and

(4) Contributions due under this act with respect to wages for covered employment shall for the purposes of sections 72-1354 to 72-1364, inclusive, be deemed to have been paid to the unemployment security fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation or unemployment insurance law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the director finds will be fair and reasonable as to all affected interests.

(b) Reimbursements paid from the employment security fund pursuant to paragraph (3) of subsection (a) of this section shall be deemed to be benefits for the purposes of this act. The director is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to such fund, in accordance with arrangements entered into pursuant to subsection (a) of this section.

(c) To the extent permissible under the laws and Constitution of the United States, the director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation or unemployment insurance law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

(d) The director shall fully cooperate with the agencies of other states, and shall make every proper effort within his means, to oppose and prevent any further action which would in his judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

(e) The director may make, and may cooperate with other appropriate agencies in making studies as to the practicality and probable cost of possible new state-administered social security programs, and the relative desirability of state (rather than national) action in any such field.

SECTION 10. That Section 72-1349, Idaho Code, be, and the same is hereby amended to read as follows:
72-1349. PAYMENT OF CONTRIBUTIONS. — (a) Contributions shall accrue and become payable by each covered employer for each calendar quarter with respect to wages for covered employment. Such contributions shall become due and be paid by each covered employer to the director for the employment security fund in accordance with such rules and regulations as the director may prescribe, and shall not be deducted in whole or in part from the wages of individuals employed by such employer.

(b) The contributions payable by each covered employer, with respect to covered employment, accruing in each calendar quarter, shall be paid on or before the last day of the month following the close of said calendar quarter.

(c) The director may, for good cause shown by a covered employer, extend the time for payment of his contributions or any part thereof, but no such extension of time shall postpone the due date more than sixty (60) days. Contributions with respect to which an extension of time for payment has been granted shall be paid on or before the last day of the period of the extension.

(d) Whenever it appears to be essential to the proper administration of this act that collection of the contributions of a covered employer must be made more often than quarterly, the director shall have authority to demand payment of the contributions of such covered employer forthwith or at such specific times as the director shall order.

(e) In accordance with regulations as the director may prescribe, any person or persons entering into a formal contract with the state, any county, city, town, school or irrigation district, or any quasi public corporation of the state, for the construction, alteration, or repair of any public building, public work, or quasi public work, the contract price of which exceeds the sum of $200.00 may be required before commencing such work, to execute a surety bond in an amount sufficient to cover contributions when due. In case the director who approves said bond shall determine that said bond has become insufficient or inadequate, he may require that a new bond be provided in such amount as he may direct. Failure on the part of the covered employer covered by the bond to pay the full amount of his contributions when due shall render the surety liable on said bond as though the surety was the employer and subject to the other provisions of this act.

(f) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a nonprofit organization is a religious, charitable,
educational or other organization which is described in section 501(c)(3) of the federal internal revenue code and which is exempt from tax under section 501(a) of such code.

A group of nonprofit organizations may elect with the approval of the director to act as a group in fulfilling the requirements of this subsection or of this act.

1. Liability for contributions and election of reimbursements. Any nonprofit organization shall pay contributions under the provisions of subsections (a), (b), (c), and (d), of this section, unless it elects in accordance with this paragraph to pay to the director for the unemployment fund an amount equal to the amount of regular benefits and one-half (½) the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which began during the effective period of such election. Where such benefits are paid utilizing wages paid by two or more employers, the portion of benefits to be repaid by a nonprofit organization shall be their proportionate share. This shall be computed on the basis of the relationship between wages utilized which were earned for services performed for such nonprofit organization and the total wages utilized in paying such benefits.

(A) Any nonprofit organization may elect to become liable for payments in lieu of contributions, provided it files with the director a written notice of its election within the thirty (30) day period following: January 1, 1972, if such organization is, or becomes subject to this act on January 1, 1972; or the date of the determination that such organization is subject if it becomes subject after January 1, 1972, such election shall be effective for not less than twelve (12) months and will continue to be in effect until terminated. The nonprofit organization must file with the director a written notice of termination of such election not later than thirty (30) days prior to the beginning of the taxable year for which such termination shall first be effective. The director may terminate the election as provided in this paragraph. The director may for good cause extend the period within which a notice of election, or a notice of termination must be filed.

(B) Any nonprofit organization which has been paying contributions under this act for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the
director not later than thirty (30) days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(C) The director shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determination shall be subject to reconsideration, appeal, and review in accordance with provisions of subsections (f), (g), (h), and (i) of section 72-1368, Idaho Code.

(2) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of this paragraph including either subparagraph (A) or subparagraph (B).

(A) 1. At the end of each calendar quarter, or at the end of any other period as determined by the director, the director shall bill each nonprofit organization (or group of nonprofit organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half (½) of the amount of extended benefits paid during such quarter or other prescribed period which is attributable to service in the employ of such organization.

2. Bond on surety requirement. Any nonprofit organization that elects to become liable for payments in lieu of contributions may be required to obtain and deposit with the director a surety bond approved by the director. The amount of the bond shall be determined by the director on the basis of potential liability for benefit costs of each employing nonprofit organization. Such bond shall be in force for a period of not less than two (2) years, and shall be renewed not less frequently than two (2) year intervals for as long as the organization continues to be liable for payments in lieu of contributions. The director shall require adjustments to be made in the bond filed as deemed appropriate. When upward adjustments are required, the adjusted bond shall be filed within thirty (30) days of the date notice of the required adjustment was mailed. Failure by an organization covered by such bond to pay the full amount of payments due, together with interest and penalties, as provided in section 72-1354, Idaho Code,
shall render the surety liable on said bond to the extent of the bond, as though the surety was a liable organization.

(B) Payment in advance. Nonprofit organizations may elect to make payments in lieu of contributions in advance of actual billing for payment costs. Advance payments shall be made as follows:
At the end of each calendar quarter, the nonprofit organization shall pay one percent (1%) of its total quarterly payroll. Such payments shall become due and payable within thirty (30) days following the quarter ending.
At the end of each taxable year the director shall compute the benefit costs attributable to such nonprofit organization, as provided in subsection (A)1 above. The director will then debit the employer's account with these charges. When benefit costs exceed payments, the employer will be billed for the amount due. When payments exceed benefit charges, the employer will be credited on next year's tax with the overpayment, or given a refund upon request.

(C) 1. Failure to pay timely. If any nonprofit organization is delinquent in making payments in lieu of contributions, as required under paragraph (A)1 or (B) of this subsection, the director may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.
2. Any nonprofit organization becoming delinquent in making payment in lieu of contributions as required in (A)1 and (B) of this subsection shall be subject to the penalty provisions provided in section 72-1354, Idaho Code, and subject to the collection provisions of section 72-1355, Idaho Code.

(D) Appeals procedure. The nonprofit organization making payments in lieu of contributions may appeal the director's determination of benefit charges and payment credits as provided in section 72-1368, Idaho Code.

(g) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent (½¢) or more, in which case it shall be increased to one cent (1¢).

SECTION 11. That Section 72-1350, Idaho Code, be, and the same is hereby amended to read as follows:
72-1350. RATE AND BASE OF CONTRIBUTIONS. -- The standard rate of contributions to be paid by each covered employer (except cost reimbursement employers) shall be 2.7 per centum of wages paid by him for covered employment during each calendar year subject, however, to modification as provided by section 72-1351, Idaho Code of this act. No covered employer's rate shall be lowered from this standard unless, as of the computation date, the total amount available for benefits in the employment security fund equals or exceeds 2.75 per centum of the total of the last annual payroll reported by all covered employers of this state.

SECTION 12. That Section 72-1351, Idaho Code, be, and the same is hereby amended to read as follows:

72-1351. EXPERIENCE RATING. -- (a) Subject to the other provisions of this act, each eligible and deficit employer's (except cost reimbursement employers) contribution rate shall be determined in the manner set forth below for the calendar year 1963 and for each calendar year thereafter:

1. (i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual payroll for the two (2) fiscal years or more (but not to exceed four (4) fiscal years) immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.

(ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the one or more fiscal years (but not to exceed four (4) fiscal years) for which he had covered employment ending on the computation date; provided, however, that any employer who on any computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cut-off date, and has during the last four (4) fiscal years occurring after June 30, 1958, paid contributions at a rate of
not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account which on the computation date immediately preceding such four (4) fiscal years were in excess of contributions paid deleted from his account, and the excess benefits so deleted shall not be considered in the computation of his contribution rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.

(iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with his previous experience under the act for the purpose of computing any future "experience factor."

(2) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor (a) the amount of his taxable payroll for the fiscal year ending on the computation date, and (b) cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (2) of this subsection shall be segregated into groups whose limits shall be those set out in Column B of the table in paragraph (5) of this subsection. Each of such groups shall be identified by the rate class number listed in Column A which is directly opposite the figures listed in Column B which represent the percentage limits of each group. Each employer on the schedules shall be assigned that contribution rate listed in Column C which is directly opposite the rate class in which such employer's cumulative payroll amount falls.

(4) (i) If the grouping of rate classes requires the inclusion of exactly one-half (½) of an employer's taxable payroll, such employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.
(ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half ($\frac{1}{2}$) of an employer's taxable payroll, such employer shall be assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and assigned the contribution rate specified for such class, notwithstanding the provisions of paragraph (3) of this subsection.

(5) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 4.75 per centum but is not less than 4.25 per centum, contribution rates for eligible and deficit employers shall be determined in accordance with the tables set out herein.

(i) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is not less than 5.75 per centum, contribution rates for eligible and deficit employers shall be reduced by subtracting .6 per centum from each contribution rate listed in the following tables; provided, however, that in no event shall a deficit employer's rate be reduced below 2.7 per centum.

(ii) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 5.75 per centum but is not less than 5.25 per centum, contribution rates for eligible and deficit employers shall be reduced by subtracting .4 per centum from each contribution rate listed in the following tables; provided, however, that in no event shall a deficit employer's rate be reduced below 2.7 per centum.

(iii) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 5.25 per centum but is not less than 4.75 per centum, contribution rates for eligible and deficit employers shall be reduced by subtracting .2 per centum from each contribution rate listed in the following tables.
(iv) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 4.25 per centum but is not less than 3.75 per centum, contribution rates of all employers shall be increased by adding 0.2 per centum to each contribution rate listed in the following tables, and the standard rate shall be 2.9 per centum.

(v) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 3.75 per centum but is not less than 3.25 per centum, contribution rates of all employers shall be increased by adding 0.4 per centum to each contribution rate listed in the following tables, and the standard rate shall be 3.1 per centum.

(vi) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 3.25 per centum but is not less than 2.75 per centum, contribution rates of all employers shall be increased by adding 0.6 per centum to each contribution rate listed in the following tables, and the standard rate shall be 3.3 per centum.

(vii) If, as of the computation date, the ratio of the unencumbered balance available in the employment security fund for the payment of benefits to the total payroll as reported for the fiscal year ending on such date is less than 2.75 per centum, contribution rates of all employers shall be increased by adding 0.6 per centum to each contribution rate listed in the following tables; provided, however, that in no event shall the rate for any employer be less than 2.7 per centum, and the standard rate shall be 3.3 per centum.
TABLE FOR RATED ACCOUNTS

<table>
<thead>
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<th>Rate Class</th>
<th>Cumulative Taxable Payroll Limits</th>
<th>Contribution Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>MORE THAN</td>
<td>EQUAL TO OR LESS THAN</td>
<td></td>
</tr>
<tr>
<td>(% of Total Taxable Payroll)</td>
<td>(% of Total Taxable Payroll)</td>
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</tr>
<tr>
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<td>-</td>
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<td>7</td>
<td>85</td>
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</tbody>
</table>

TABLE FOR DEFICIT ACCOUNTS

<table>
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<th>Rate Class</th>
<th>Cumulative Taxable Payroll Limits</th>
<th>Contribution Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>MORE THAN</td>
<td>EQUAL TO OR LESS THAN</td>
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</tr>
<tr>
<td>(% of Total Taxable Payroll)</td>
<td>(% of Total Taxable Payroll)</td>
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</tr>
<tr>
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</tr>
<tr>
<td>6</td>
<td>83 1/3</td>
<td>-</td>
</tr>
</tbody>
</table>

(6) If the payroll amount or the experience factor or both such payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, such employer shall be placed in that position on the schedules which he would have occupied had his payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.
(b) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts (except cost reimbursement employers) pursuant to the applicable regulations prior to the effective date of this subsection shall not be changed except as provided by this act. Benefits paid prior to June 30, with respect to benefit years commencing with July 1, 1967, and thereafter shall, as of the June 30 of each year preceding the calendar year for which a covered employer's contribution rate is effective, be charged to the account of the covered employer (except cost reimbursement employers) who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that after the effective date of this act no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

1. If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services;
2. If paid in accordance with the provisions of section 72-1368(j) and such determination of decision to pay benefits is subsequently reversed; or
3. If paid to multistate claimants and based upon wages paid or payable in more than one state pursuant to the reciprocal arrangement provisions of section 72-1344. For that portion of benefits paid to multistate claimants pursuant to section 72-1344, Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim.
4. If paid in accordance with the extended benefit program triggered by either national or state indicators.

(c) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323. An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cut-off date, pursuant to the provisions of this and preceding acts, and which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the unemployment compensation law, and employment security law, and regulations thereunder in effect at the time such benefits were paid. Nothing
in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.

(d) (1) Whenever any individual or type of organization (whether or not a covered employer within the meaning of section 72-1315) in any manner succeeds to, or acquires all/or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate account and the actual contribution, benefit and payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within the 90 days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and rate of contribution, and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this act; provided, however, that such 90-day period may be extended at the discretion of the director, and provided further that whenever a predecessor covered employer has a deficit experience rating account as of the last computation date such transfer, as herein provided, shall be mandatory except where it is shown by substantial evidence, that the management or ownership or both management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer.

(2) Whenever any individual or type of organization (whether or not a covered employer within the meaning of section 72-1315) in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate account and the actual contribution, benefit and payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the director, be transferred to the
successor employer for the purpose of determining such successor's liability and rate of contribution and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this act; provided, however, that such 90-day period may be extended at the discretion of the director, and provided further that whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, such transfer, as herein provided, shall be mandatory except where it is shown by substantial evidence, that the management or ownership or both management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten (10) days after notice to supply the required payroll information, the transfer shall be based on estimates of the allocable payrolls.

(3) (i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate of contribution, effective the first day of the calendar quarter immediately following the date of acquisition, shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.

(ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one predecessor the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.

(e) Each employer shall be notified of his rate of contribution as determined for any calendar year pursuant to this section. Such determination shall become conclusive and binding upon the employer unless, within fourteen (14) days after delivery or mailing of the notice thereof to his last known address, the employer files an application for redetermination setting forth his reasons therefor. Reconsideration shall be limited to transactions occurring subsequent to any previous determination which has become final in accordance with the provisions of this or previous
acts. The employer shall be promptly notified of the redetermination which
shall become final unless within fourteen (14) days after delivery or mailing
of notice thereof to his last known address an appeal is filed with the
employment security agency. Proceedings on the appeal shall be had in
accordance with the provisions of section 72-1361 of this act.

SECTION 13. That Section 72-1352, Idaho Code, be, and the same is
hereby amended to read as follows:

72-1352. PERIOD, TERMINATION, AND ELECTION OF
EMPLOYER COVERAGE. —(a) Except as otherwise provided in
sub-section (c) of this section any employer who is or becomes a covered
employer within any calendar year shall be deemed to be a covered employer
until his coverage is terminated.

(b) The coverage of any covered employer may be terminated if —

(1) As of the close of any calendar quarter, it is found that such
covered employer had no individuals performing services for him in
covered employment, and that the continued operation of his trade,
profession, or business is not likely to result in his having a quarterly
payroll of $300.00 or more within the ensuing two calendar quarters,
or

(2) As of the close of a calendar year, it is found that such covered
employer did not pay or become liable to pay for services rendered to
him in covered employment wages amounting to $300.00 or more in
any calendar quarter of such year, and that the continued operation of
his trade, profession, or business is not likely to create covered
employment as defined in section 72-1316, within the ensuing calendar
year.

(3) Notwithstanding the provisions in subsections (b)(1) or (b)(2) the
coverage of an employer may not be terminated if he is or was subject
under the provisions of the federal unemployment tax act during the
current or preceding calendar year.

(c) Any employer for whom services that do not constitute covered
employment are performed, may file with the director a written election
that all such services with respect to which payments are not required under
an unemployment compensation or insurance law of any other state or of
the federal government, and which are performed by individuals for him in
one or more distinct establishments or places of business, shall be
deemed to constitute covered employment for not less than two calendar
years. Upon written approval by the director of such election, such services
shall be deemed to constitute covered employment from and after the date stated in such approval. Such services shall cease to be covered employment as of January 1st of any calendar year subsequent to such two calendar years, if not later than January 31st of such year either such employer has filed with the director a written notice of termination, or the director on his own motion, has given notice of termination of such coverage.

(1) Any political subdivision of this state may elect to cover under this act services performed by employees of all hospitals and institutions of higher education operated by such political subdivisions. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits paid attributable to such employment. Such payments shall be made in such manner and frequency as prescribed by the director. Payments in lieu of contributions will be equal to the full amount of regular benefits plus one-half (½) the amount of extended benefits paid during the prescribed period which is attributable to service in the employ of such political subdivisions.

These political subdivisions may elect such coverage by filing with the director a notice of such election at least thirty (30) days prior to the effective date of such election. The election may exclude those services excluded pursuant to the provisions of section 72-1316, Idaho Code. An election under this subsection may be terminated by filing written notice with the director not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

(d) Benefits payable to the employees thus covered will be payable under the same basis, the same benefit formula and eligibility conditions as prevail for all other covered employees.

SECTION 14. That Section 72-1366, Idaho Code, be, and the same is hereby amended to read as follows:

72-1366. PERSONAL ELIGIBILITY CONDITIONS. — The personal eligibility conditions of a benefit claimant are that —

(a) In accordance with the provisions of this act, and such rules and regulations consistent therewith, as the director may prescribe —

(1) He shall have made a claim for benefits;

(2) He shall have registered for work and thereafter reported at an employment office or other agency as required by section 72-1365(c).
(b) In some calendar quarter within his base period he shall have met the minimum wage requirements in his base period as provided in section 72-1367.

(c) With respect to a female claimant, her unemployment is not due to having voluntarily left work to marry, or to perform the customary duties of a housewife, or to leave the locale to live with her husband. The provisions of this subsection shall not apply after a change in conditions whereby she has become the main support of herself or her immediate family.

(d) A female claimant shall be ineligible to receive benefits for any week—

1. Within the twelve (12) weeks prior to the expected date of such individual's giving birth to a child; and
2. During pregnancy if the individual voluntarily left her last employment because of pregnancy. The ineligibility under (1) or (2) herein shall continue until she has received wages in the amount of eight (8) times her weekly benefit amount following birth of the child, provided that she may requalify within six weeks after the birth of her child, if conditions have changed whereby she has become the main support of herself or her immediate family.

(e) During the whole of any week with respect to which he claims benefits or credit to his waiting period he was able to work, available for suitable work, and seeking work, provided, however, the director shall waive these provisions for each week he is attending training under provisions of 72-1312(a); and provided, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has filed a claim and registered for work and no suitable work has been available for him after the beginning of such illness or disability.

(f) His unemployment is not due to the fact that he left his employment voluntarily without good cause, or that he was discharged for misconduct in connection with his employment.

(g) He has not been found to be indebted to the employment security fund pursuant to the provisions of sections 72-1349 or 72-1368(m)(l).

(h) His unemployment is not due to his failure without good cause to apply for available suitable work as directed by a representative of the director or to accept suitable work when offered to him, provided, however, the director shall waive these provisions for each week he is attending training under provisions of subsection (a) of section 72-1312, Idaho Code.
(i) In determining for the purposes of this act, whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, his physical fitness, experience, training, past earnings, length of unemployment and prospects for obtaining local employment in his customary occupation, the distance of the work from his residence, and other pertinent factors shall be considered. No employment shall, in any event, be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work or to hold himself available for work under any of the following conditions:

(1) If the vacancy of the position offered is due directly to a strike, lock-out, or other labor dispute;
(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality of the work offered;
(3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(j) A benefit claimant shall not be eligible to receive benefits for any week with respect to which it is found that his unemployment is due to a labor dispute; provided, that this subsection shall not apply if it is shown that —

(1) He is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and
(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute.

(k) A benefit claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation or insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by the provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment compensation law of the United States.
A benefit claimant shall not be entitled to benefits if he has willfully made a false statement or representation or willfully failed to report a material fact to obtain said benefits under the provisions of this act.

A benefit claimant shall not be entitled to benefits if his principal occupation is self-employment.

A benefit claimant who has been found ineligible for benefits under the provisions of subsections (c), (f) or (h) of this section may re-establish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least eight (8) times his weekly benefit amount.

Benefits based on service in employment defined in sections 72-1349(e), 72-1316A, and 72-1352(c), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

If the services performed during one-half or more of any contract period by an individual for an institution of higher education as defined in section 72-1322B, Idaho Code, are in an instructional, research, or principal administrative capacity, all the service of such individual shall be deemed to be in such capacity.

If the services performed during less than one-half of any contract period by an individual for such an institution of higher education are in an instructional, research, or principal administrative capacity, none of the service of such individual shall be deemed to be in such capacity.

As used in this section, "contract period" means the entire period for which the individual contracts to perform services, pursuant to the terms of the contract.

No individual is eligible to receive benefits in two (2) successive benefit years unless subsequent to the beginning of the first of said benefit years during which he received benefits he performed service and earned remuneration for such service in an amount equal to not less than three (3)
times his weekly benefit amount established during the first benefit year.

SECTION 15. This act shall be in full force and effect on and after January 1, 1972.

Approved March 18, 1971.

CHAPTER 143
(H. B. No. 36, As Amended)

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

SECTION 1. The penal and correctional code of the state of Idaho is hereby enacted as follows:

TITLE 18
PENAL AND CORRECTIONAL CODE
CHAPTER I
PRELIMINARY PROVISIONS

18-101. TITLE AND EFFECTIVE DATE. — (1) This act is called the penal and correctional code and may be cited as "P.C.C."

(2) Except as provided in subsection (3) of this section, this code does not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this section, an offense was committed prior to the effective date of this code if any of the elements of the offense occurred prior thereto.

(3) In any case pending on or after the effective date of this code, involving an offense committed prior to such date:
   (a) procedural provisions of this code shall govern, insofar as they are justly applicable and their application does not introduce confusion or delay;
   (b) provisions of this code according a defense or mitigation shall apply, with the consent of the defendant;
   (c) the court, with the consent of the defendant, may impose sentence under the provisions of this code applicable to the offense and the offender.

18-102. PURPOSES — PRINCIPLES OF CONSTRUCTION. — (1) The general purposes of the provisions governing the definition of offenses are:
   (a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;
   (b) to subject to public control persons whose conduct indicates that they are disposed to commit crimes;
   (c) to safeguard conduct that is without fault from condemnation as criminal;
   (d) to give fair warning of the nature of the conduct declared to constitute an offense;
   (e) to differentiate on reasonable grounds between serious and minor offenses.

(2) The general purposes of the provisions governing the sentencing and treatment of offenders are:
(a) to prevent the commission of offenses;
(b) to promote the correction and rehabilitation of offenders;
(c) to safeguard offenders against excessive, disproportionate or arbitrary punishment;
(d) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;
(e) to differentiate among offenders with a view to a just individualization in their treatment.

(3) The provisions of this code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purposes of the particular provision involved. The discretionary powers conferred by this code shall be exercised in accordance with the criteria stated in this code and, insofar as such criteria are not decisive, to further the general purposes stated in this section.

(4) In order to make the application and enforcement of the criminal laws of the state of Idaho uniform throughout the state, it is the intent of the legislature to preempt, to the exclusion of city and county governments, the regulation or prohibition of conduct declared by this act to constitute an offense. To that end, it is hereby declared that every city or county ordinance which deals with the regulation or prohibition of conduct declared by this act to constitute an offense pursuant hereto shall stand abrogated and unenforceable on or after such effective date; and that no city or county government shall have the power to adopt any ordinance relating to the regulation or prohibition of conduct declared by this act to constitute an offense on or after such effective date.

18-103. TERRITORIAL APPLICABILITY. — (1) Except as otherwise provided in this section, a person may be convicted under the law of this state of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(a) either the conduct which is an element of the offense or the result which is such an element occurs within this state; or
(b) conduct occurring outside the state is sufficient under the law of this state to constitute an attempt to commit an offense within the state; or
(c) conduct occurring outside the state is sufficient under the law of this state to constitute a conspiracy to commit an offense within the state and an overt act in furtherance of such conspiracy occurs within the state; or
(d) conduct occurring within the state establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this state; or
(e) the offense consists of the omission to perform a legal duty imposed by the law of this state with respect to domicile, residence or a relationship to a person, thing or transaction in the state; or
(f) the offense is based on a statute of this state which expressly prohibits conduct outside the state, when the conduct bears a reasonable relation to a legitimate interest of this state and the actor knows or should know that his conduct is likely to affect that interest.

(2) Subsection (1)(a) of this section does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(3) Subsection (1)(a) of this section does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the state which would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the state.

(4) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection (1)(a) of this section and if the body of a homicide victim is found within the state, it is presumed that such result occurred within the state.

(5) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

(6) Jurisdiction to try an offense is in any county of this state in which either the conduct which is an element of the offense occurred or the result which is such an element occurred. When an offense is committed on or near the boundary of two (2) or more counties, and the place of the conduct or result constituting an element of the offense cannot be determined with reasonable certainty, the jurisdiction to try the offense is in either county.

18-104. CLASSES OF CRIMES — VIOLATIONS. — (1) An offense defined by this code or by any other statute of this state, for which a sentence of death or of imprisonment is authorized, constitutes a crime.
Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(2) A crime is a felony if it is so designated in this code or if persons convicted thereof may be sentenced to death or to imprisonment for a term which, apart from an extended term, is in excess of one (1) year.

(3) A crime is a misdemeanor if it is so designated in this code or in a statute other than this code enacted subsequent thereto.

(4) A crime is a petty misdemeanor if it is so designated in this code or in a statute other than this code enacted subsequent thereto or if it is defined by a statute other than this code which now provides that persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is less than one (1) year.

(5) An offense defined by this code or by any other statute of this state constitutes a violation if it is so designated in this code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction or if it is defined by a statute other than this code which now provides that the offense shall not constitute a crime. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(6) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a petty misdemeanor.

(7) An offense defined by any statute of this state other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this code.

18-105. ALL OFFENSES DEFINED BY STATUTE — APPLICATION OF GENERAL PROVISIONS OF THE CODE. — (1) No conduct constitutes an offense unless it is a crime or violation under this code or another statute of this state.

(2) The provisions of chapters 1, 2, 3 and 4 of this code are applicable to offenses defined by other statutes, unless this code otherwise provides.

(3) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

18-106. TIME LIMITATIONS. — (1) A prosecution for murder may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following period of limitation:
(a) a prosecution for a felony of the first degree must be commenced within six (6) years after it is committed;  
(b) a prosecution for any other felony must be commenced within three (3) years after it is committed;  
(c) a prosecution for a misdemeanor must be commenced within two (2) years after it is committed;  
(d) a prosecution for a petty misdemeanor or a violation must be commenced within six (6) months after it is committed.  
(3) If the period prescribed in subsection (2) of this section has expired, a prosecution may nevertheless be commenced for:  
(a) any offense a material element of which is either fraud or a breach of fiduciary obligation within one (1) year after discovery of the offense by an aggrieved party or by a person who has legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three (3) years; and  
(b) any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two (2) years thereafter, but in no case shall this provision extend the period of limitation otherwise applicable by more than three (3) years.  
(4) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant’s complicity therein is terminated. Time starts to run on the day after the offense is committed.  
(5) A prosecution is commenced either when an indictment is found, or an information filed, or when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.  
(6) The period of limitation does not run:  
(a) during any time when the accused is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three (3) years; or  
(b) during any time when a prosecution against the accused for the same conduct is pending in this state.
CONSTITUTES MORE THAN ONE OFFENSE. — (1) Prosecution for multiple offenses; limitation on convictions. When the same conduct of a defendant may establish the commission of more than one (1) offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one (1) offense if:

(a) one (1) offense is included in the other, as defined in subsection (4) of this section; or

(b) one (1) offense consists only of a conspiracy or other form of preparation to commit the other; or

(c) inconsistent findings of fact are required to establish the commission of the offenses; or

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

(2) Limitation on separate trials for multiple offenses. Except as provided in subsection (3) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

(3) Authority of court to order separate trials. When a defendant is charged with two (2) or more offenses based on the same conduct or arising from the same criminal episode, the court, on application of the prosecuting attorney or of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

(4) Conviction of included offense permitted. A defendant may be convicted of an offense included in an offense charged in the indictment or the information. An offense is so included when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) it consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public
interest or a lesser kind of culpability suffices to establish its commission.

(5) Submission of included offense to jury. The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

18-108. WHEN PROSECUTION BARRIED BY FORMER PROSECUTION FOR THE SAME OFFENSE. — When a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(2) The former prosecution was terminated, after the information had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two (2) cases, failure to enter judgment must be for a reason other than a motion of the defendant.

(4) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(a) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

(b) the trial court finds that the termination is necessary because;

   (A) it is physically impossible to proceed with the trial in conformity with law; or
(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or
(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant of the state; or
(D) the jury is unable to agree upon a verdict; or
(E) false statements of a juror on voir dire prevent a fair trial.

18-109. WHEN PROSECUTION BARRED BY FORMER PROSECUTION FOR DIFFERENT OFFENSE. — Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 18-108 of this code, and the subsequent prosecution is for:
   (a) any offense of which the defendant could have been convicted on the first prosecution; or
   (b) any offense for which the defendant should have been tried on the first prosecution under section 18-107 of this code, unless the court ordered a separate trial of the charge of such offense; or
   (c) the same conduct, unless (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or (B) the second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(3) The former prosecution was improperly terminated, as improper termination is defined in section 18-108 of this code, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.
18-110. FORMER PROSECUTION IN ANOTHER JURISDICTION — WHEN A BAR. — When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(1) The first prosecution resulted in an acquittal or in a conviction as defined in section 18-108 of this code, and the subsequent prosecution is based on the same conduct, unless:

(a) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or

(b) the second offense was not consummated when the former trial began; or

(2) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

18-111. FORMER PROSECUTION BEFORE COURT LACKING JURISDICTION OR WHEN FRAUDULENTLY PROCURED BY THE DEFENDANT. — A prosecution is not a bar within the meaning of sections 18-108, 18-109 and 18-110 of this code, under any of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense; or

(2) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed; or

(3) The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar process.

18-112. PROOF BEYOND A REASONABLE DOUBT — AFFIRMATIVE DEFENSES — BURDEN OF PROVING FACT WHEN NOT AN ELEMENT OF AN OFFENSE — PRESUMPTIONS. — (1) No person may be convicted of an offense unless each element of such offense is proved
beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

(2) Subsection (1) of this section does not:

(a) require the disproof of an affirmative defense unless and until there is evidence supporting such defense; or

(b) apply to any defense which this code or another statute plainly requires the defendant to prove by a preponderance of evidence.

(3) A ground of defense is affirmative, within the meaning of subsection (2)(a) of this section, when:

(a) it arises under a section of this code which so provides; or

(b) it relates to an offense defined by a statute other than this code and such statute so provides; or

(c) it involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which he can fairly be required to adduce supporting evidence.

(4) When the application of this code depends upon the finding of a fact which is not an element of an offense, unless this code otherwise provides:

(a) the burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(b) the fact must be proved to the satisfaction of the court or jury, as the case may be.

(5) When this code establishes a presumption with respect to any fact which is an element of an offense, it has the following consequences:

(a) when there is evidence of the facts which give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

(b) when the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

(6) A presumption now established by this code or inconsistent with it has the consequences otherwise accorded it by law.

18-113. GENERAL DEFINITIONS. — In this code, unless a different meaning plainly is required:
(1) "Statute" includes the constitution and a local law or ordinance of a political subdivision of the state.

(2) "Act" or "action" means a bodily movement whether voluntary or involuntary.

(3) "Voluntary" has the meaning specified in section 18-201 of this code.

(4) "Omission" means a failure to act.

(5) "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions.

(6) "Actor" includes, where relevant, a person guilty of an omission.

(7) "Acted" includes, where relevant, "omitted to act".

(8) "Person", "he" and "actor" include any natural person and, where relevant, a corporation or an unincorporated association.

(9) "Element of an offense" means (a) such conduct of (b) such attendant circumstances or (c) such a result of conduct as:

   (A) is included in the description of the forbidden conduct in the definition of the offense; or
   (B) establishes the required kind of culpability; or
   (C) negatives an excuse or justification for such conduct; or
   (D) negatives a defense under the statute of limitations; or
   (E) establishes jurisdiction or venue.

(10) "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (a) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (b) the existence of a justification or excuse for such conduct.

(11) "Purposely" has the meaning specified in section 18-202 of this code, and equivalent terms such as "with purpose", "designed" or "with design" have the same meaning.

(12) "Intentionally" or "with intent" means purposely.

(13) "Knowingly" has the meaning specified in section 18-202 of this code, and equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(14) "Recklessly" has the meaning specified in section 18-202 of this code, and equivalent terms such as "recklessness" or "with recklessness" have the same meaning.

(15) "Negligently" has the meaning specified in section 18-202 of this code, and equivalent terms such as "negligence" or "with negligence" have the same meaning.
(16) "Reasonably believes" or "reasonable belief" designates a belief which the actor is not reckless or negligent in holding.

CHAPTER 2
GENERAL PRINCIPLES OF LIABILITY

18-201. REQUIREMENT OF VOLUNTARY ACT – OMISSION AS BASIS OF LIABILITY – POSSESSION AS AN ACT. – (1) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

(2) The following are not voluntary acts within the meaning of this section:
   (a) a reflex or convulsion;
   (b) a bodily movement during unconsciousness or sleep;
   (c) conduct during hypnosis or resulting from hypnotic suggestion;
   (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:
   (a) the omission is expressly made sufficient by the law defining the offense; or
   (b) a duty to perform the omitted act is otherwise imposed by law.

(4) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

18-202. GENERAL REQUIREMENTS OF CULPABILITY. –
(1) Minimum requirements of culpability. Except as provided in section 18-205 of this code, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) Kinds of culpability defined.
   (a) Purposely. A person acts purposely with respect to a material element of an offense when:
      (A) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
      (B) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.
(b) Knowingly. A person acts knowingly with respect to a material element of an offense when:

(A) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(B) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability required unless otherwise provided. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Prescribed culpability requirement applies to all material elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for negligence, recklessness and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.
(6) Requirement of purpose satisfied if purpose is conditional. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) Requirement of knowledge satisfied by knowledge of high probability. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) Requirement of willfulness satisfied by acting knowingly. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Culpability as to illegality of conduct. Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or this code so provides.

(10) Culpability as determinant of grade of offense. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

18-203. CAUSAL RELATIONSHIP BETWEEN CONDUCT AND RESULT — DIVERGENCE BETWEEN RESULT DESIGNED OR CONTEMPLATED AND ACTUAL RESULT OR BETWEEN PROBABLE AND ACTUAL RESULT. — (1) Conduct is the cause of a result when:

(a) it is an antecedent but for which the result in question would not have occurred; and

(b) the relationship between the conduct and result satisfies any additional causal requirements imposed by this code or by the law defining the offense.

(2) When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor unless:

(a) the actual result differs from that designed or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or
contemplated would have been more serious or more extensive than that caused; or
(b) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:
(a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or
(b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

(4) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

18-204. IGNORANCE OR MISTAKE. — (1) Ignorance or mistake as to a matter of fact or law is a defense if:
(a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or
(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:
(a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made
available prior to the conduct alleged; or
(b) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (A) a statute or other enactment; (B) a judicial decision, opinion or judgment; (C) an administrative order or grant of permission; or (D) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under subsection (3) of this section by a preponderance of evidence. The defense afforded by subsection 3(a) of this section shall not be available to the defendant after sixty (60) days from the adjournment of the legislative body which enacted the statute or other enactment.

18-205. WHEN CULPABILITY REQUIREMENTS ARE INAPPLICABLE TO VIOLATIONS AND TO OFFENSES DEFINED BY OTHER STATUTES – EFFECT OF ABSOLUTE LIABILITY IN REDUCING GRADE OF OFFENSE TO VIOLATION. – (1) The requirements of culpability prescribed by sections 18-201 and 18-202 of this code do not apply to:
(a) offenses which constitute violations, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with effective enforcement of the law defining the offense; or
(b) offenses defined by statutes other than this code, insofar as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.
(2) Notwithstanding any other provision of existing law and unless a subsequent statute otherwise provides:
(a) when absolute liability is imposed with respect to any material element of an offense defined by a statute other than this code and a conviction is based upon such liability, the offense constitutes a violation; and
(b) although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than this code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that may be imposed therefor upon conviction are
determined by section 18-104 and chapter 22 of this code.

18-206. LIABILITY FOR CONDUCT OF ANOTHER — COMPLICITY. — (1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

(a) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
(b) he is made accountable for the conduct of such other person by this code or by the law defining the offense; or
(c) he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the purpose of promoting or facilitating the commission of the offense, he
   (A) solicits such other person to commit it; or
   (B) aids or agrees or attempts to aid such other person in planning or committing it; or
   (C) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or
(b) his conduct is expressly declared by law to establish his complicity.

(4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

(6) Unless otherwise provided by this code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(a) he is a victim of that offense; or
(b) the offense is so defined that his conduct is inevitably incident to its commission; or
(c) he terminates his complicity prior to the commission of the offense and

(A) wholly deprives it of effectiveness in the commission of the offense; or

(B) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

18-207. LIABILITY OF CORPORATIONS UNINCORPORATED ASSOCIATIONS AND PERSONS ACTING OR UNDER A DUTY TO ACT IN THEIR BEHALF. — (1) A corporation may be convicted of the commission of an offense if:

(a) the offense is a violation or the offense is defined by a statute other than this code in which a legislative purpose to impose liability on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply; or

(b) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(c) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment.

(2) When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation shall be assumed, unless the contrary plainly appears.

(3) An unincorporated association may be convicted of the commission of an offense if:

(a) the offense is defined by a statute other than this code which expressly provides for the liability of such an association and the conduct is performed by an agent of the association acting in behalf of
the association within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the association is accountable or the circumstances under which it is accountable, such provisions shall apply; or
(b) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on associations by law.
(4) As used in this section:
(a) "corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program;
(b) "agent" means any director, officer, servant, employee or other person authorized to act in behalf of the corporation or association and, in the case of an unincorporated association, a member of such association;
(c) "high managerial agent" means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or association having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation or association.
(5) In any prosecution of a corporation or an unincorporated association for the commission of an offense included within the terms of subsection (1)(a) or subsection (3)(a) of this section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves by a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly inconsistent with the legislative purpose in defining the particular offense.
(6) (a) A person is legally accountable for any conduct he performs or causes to be performed in the name of the corporation or an unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf;
(b) whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself;
(c) when a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated
association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and the degree involved.

18-208. INTOXICATION. — (1) Except as provided in subsection (4) of this section, intoxication of the actor is not a defense unless it negatives an element of the offense.

(2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

(3) Intoxication does not, in itself, constitute mental disease.

(4) Intoxication which:
(a) is not self-induced; or
(b) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of law.

(5) Definitions. In this section, unless a different meaning plainly is required:
(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;
(b) "self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;
(c) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

18-209. DURESS. — (1) It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.
(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this section. The presumption that a woman, acting in the presence of her husband, is coerced is abolished.

(4) When the conduct of the actor would otherwise be justifiable under section 18-302 of this code, this section does not preclude such defense.

18-210. MILITARY ORDERS. — It is an affirmative defense that the actor, in engaging in the conduct charged to constitute an offense, does no more than execute an order of his superior in the armed services which he does not know to be unlawful.

18-211. CONSENT. — (1) In general. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(2) Consent to bodily harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:
   (a) the bodily harm consented to or threatened by the conduct consented to is not serious; or
   (b) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
   (c) the consent establishes a justification for the conduct under chapter 3 of this code.

(3) Ineffective consent. Unless otherwise provided by this code or by the law defining the offense, assent does not constitute consent if:
   (a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
   (b) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
   (c) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
   (d) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

18-212. DE MINIMIS INFRACTIONS. — The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to
constitute an offense and the nature of the attendant circumstances, it finds
that the defendant's conduct;

(1) Was within a customary license or tolerance, neither expressly
negatived by the person whose interest was infringed nor inconsistent with
the purpose of the law defining the offense; or

(2) Did not actually cause or threaten the harm or evil sought to be
prevented by the law defining the offense or did so only to an extent too
trivial to warrant the condemnation of conviction; or

(3) Presents such other extenuations that it cannot reasonably be
regarded as envisaged by the legislature in forbidding the offense.

The court shall not dismiss a prosecution under subsection (3) of this
section without filing a written statement of its reasons.

18-213. ENTRAPMENT. — (1) A public law enforcement official or a
person acting in cooperation with such an official perpetrates an entrapment
if for the purpose of obtaining evidence of the commission of an offense, he
induces or encourages another person to engage in conduct constituting such
offense by either:

(a) making knowingly false representations designed to induce the
belief that such conduct is not prohibited; or

(b) employing methods of persuasion or inducement which create a
substantial risk that such an offense will be committed by persons who
would not have been ready to commit said offense but for such
persuasion or inducement.

(2) Except as provided in subsection (3) of this section, a per
son prosecuted for an offense shall be acquitted if he proves by a preponderance
of evidence that his conduct occurred in response to an entrapment. The
issue of entrapment shall be tried by the court in the absence of the jury.

(3) The defense afforded by this section is unavailable when causing or
threatening bodily injury is an element of the offense charged and the
prosecution is based on conduct causing or threatening such injury to a
person other than the person perpetrating the entrapment.

CHAPTER 3
GENERAL PRINCIPLES OF JUSTIFICATION

18-301. JUSTIFICATION AN AFFIRMATIVE DEFENSE CIVIL
REMEDIES UNAFFECTED. — (1) In any prosecution based on conduct
which is justifiable under this chapter, justification is an affirmative defense.

(2) The fact that conduct is justifiable under this chapter does not
abolish or impair any remedy for such conduct which is available in any civil
action.
18-302. JUSTIFICATION GENERALLY — CHOICE OF EVILS. —

(1) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) neither this code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

18-303. EXECUTION OF PUBLIC DUTY. — (1) Except as provided in subsection (2) of this section, conduct is justifiable when it is required or authorized by:

(a) the law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties; or

(b) the law governing the execution of legal process; or

(c) the judgment or order of a competent court or tribunal; or

(d) the law governing the armed services or the lawful conduct of war; or

(e) any other provision of law imposing a public duty.

(2) The other sections of this chapter apply to:

(a) the use of force upon or toward the person of another for any of the purposes dealt with in such sections; and

(b) the use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law or occurs in the lawful conduct of war.

(3) The justification afforded by subsection (1) of this section applies:

(a) when the actor believes his conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(b) when the actor believes his conduct to be required or authorized to
assist a public officer in the performance of his duties, notwithstanding
that the officer exceeded his legal authority.

18-304. USE OF FORCE IN SELF-PROTECTION. — (1) Use of force
justifiable for protection of the person. Subject to the provisions of this
section and of section 18-309 of this code, the use of force upon or toward
another person is justifiable when the actor believes that such force is
immediately necessary for the purpose of protecting himself against the use
of unlawful force by such other person on the present occasion.

(2) Limitations on justifying necessity for use of force.
(a) The use of force is not justifiable under this section:

(A) to resist an arrest which the actor knows is being made by a
peace officer, although the arrest is unlawful; or

(B) to resist force used by the occupier or possessor of property
or by another person on his behalf, where the actor knows that
the person using the force is doing so under a claim of right to
protect the property, except that this limitation shall not apply if:
1. the actor is a public officer acting in the performance of
his duties or a person lawfully assisting him therein or a
person making or assisting in a lawful arrest; or
2. the actor has been unlawfully dispossessed of the property
and is making a re-entry or recaption justified by section
18-306 of this code;
3. the actor believes that such force is necessary to protect
himself against death or serious bodily harm.

(b) The use of deadly force is not justifiable under this section unless
the actor believes that such force is necessary to protect himself against
death, serious bodily harm, kidnapping or sexual intercourse compelled
by force or threat; nor is it justifiable if:

(A) the actor, with the purpose of causing death or serious bodily
harm, provoked the use of force against himself in the same
encounter; or

(B) the actor knows that he can avoid the necessity of using such
force with complete safety by retreating or by surrendering
possession of a thing to a person asserting a claim of right thereto
or by complying with a demand that he abstain from any action
which he has no duty to take, except that:

1. the actor is not obliged to retreat from his dwelling or
place of work, unless he was the initial aggressor or is assailed
in his place of work by another person whose place of work the actor knows it to be; and
2. a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.
(c) Except as required by paragraphs (a) and (b) of this subsection, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.
(3) Use of confinement as protective force. The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

18-305. USE OF FORCE FOR THE PROTECTION OF OTHER PERSONS. — (1) Subject to the provisions of this section and of section 18-309 of this code, the use of force upon or toward the person of another is justifiable to protect a third person when:
   (a) the actor would be justified under section 18-304 of this code, in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and
   (b) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and
   (c) the actor believes that his intervention is necessary for the protection of such other person.
   (2) Notwithstanding subsection (1) of this section:
   (a) when the actor would be obliged under section 18-304 of this code to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person; and
(b) when the person whom the actor seeks to protect would be obliged under section 18-304 of this code to retreat, to surrender the possession of a thing or to comply with a demand if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain complete safety in that way; and

(c) neither the actor nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his own.

18-306. USE OF FORCE FOR THE PROTECTION OF PROPERTY.

(1) Use of force justifiable for protection of property. Subject to the provisions of this section and of section 18-309 of this code, the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(a) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or

(b) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession, and provided, further, that:

(A) the force is used immediately or on fresh pursuit after such dispossesion; or

(B) the actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or re-entry until a court order is obtained.

(2) Meaning of possession. For the purposes of subsection (1) of this section:

(a) a person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession, unless the property is movable and was and still is located on land in his possession;
(b) a person who has been dispossessed of land does not regain possession thereof merely by setting foot thereon;
(c) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.

(3) Limitations on justifiable use of force.
(a) Request to desist. The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that:
   (A) such request would be useless; or
   (B) it would be dangerous to himself or another person to make the request; or
   (C) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.
(b) Exclusion of trespasser. The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.
(c) Resistance of lawful re-entry or recaption. The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this section, although the actor believes that such re-entry or recaption is unlawful, if:
   (A) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and
   (B) it is otherwise justifiable under paragraph (1)(b) of this section.
(d) Use of deadly force. The use of deadly force is not justifiable under this section unless the actor believes that:
   (A) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or
   (B) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:
       1. has employed or threatened deadly force against or in the presence of the actor; or
2. the use of force other than deadly force to prevent the
commission or the consummation of the crime would expose
the actor or another in his presence to substantial danger of
serious bodily harm.

(4) Use of confinement as protective force. The justification afforded
by this section extends to the use of confinement as protective force only if
the actor takes all reasonable measures to terminate the confinement as soon
as he knows that he can do so with safety to the property, unless the person
confined has been arrested on a charge of crime.

(5) Use of device to protect property. The justification afforded by
this section extends to the use of a device for the purpose of protecting
property only if:

(a) the device is not designed to cause or known to create a substantial
risk of causing death or serious bodily harm; and

(b) the use of the particular device to protect the property from entry
or trespass is reasonable under the circumstances, as the actor believes
them to be; and

(c) the device is one customarily used for such a purpose or reasonable
care is taken to make known to probable intruders the fact that it is
used.

(6) Use of force to pass wrongful obstructor. The use of force to pass a
person whom the actor believes to be purposely or knowingly and
unjustifiably obstructing the actor from going to a place to which he may
lawfully go is justifiable, provided that:

(a) the actor believes that the person against whom he uses force has
no claim of right to obstruct the actor; and

(b) the actor is not being obstructed from entry or movement on land
which he knows to be in the possession or custody of the person
obstructing him, or in the possession or custody of another person by
whose authority the obstructor acts, unless the circumstances, as the
actor believes them to be, are of such urgency that it would not be
reasonable to postpone the entry or movement on such land until a
court order is obtained; and

(c) the force used is not greater than would be justifiable if the person
obstructing the actor were using force against him to prevent his
passage.

18-307. USE OF FORCE IN LAW ENFORCEMENT. – (1) Use of
force justifiable to effect an arrest. Subject to the provisions of this section
and of section 18-309, of this code, the use of force upon or toward the 
person of another is justifiable when the actor is making or assisting in 
making an arrest and the actor believes that such force is immediately 
necessary to effect a lawful arrest.

(2) Limitations on the use of force.

(a) The use of force is not justifiable under this section unless:

(A) the actor makes known the purpose of the arrest or believes 
that it is otherwise known by or cannot reasonably be made 
known to the person to be arrested; and 

(B) when the arrest is made under a warrant, the warrant is valid 
or believed by the actor to be valid.

(b) The use of deadly force is not justifiable under this section unless:

(A) the arrest is for a felony; and

(B) the person effecting the arrest is authorized to act as a peace 
officer or is assisting a person whom he believes to be authorized 
to act as a peace officer; and

(C) the actor believes that the force employed creates no 
substantial risk of injury to innocent persons; and

(D) the actor believes that:

1. the crime for which the arrest is made involved conduct 
including the use or threatened use of deadly force; or

2. there is a substantial risk that the person to be arrested 
will cause death or serious bodily harm if his apprehension is 
delayed.

(3) Use of force to prevent escape from custody. The use of force to 
prevent the escape of an arrested person from custody is justifiable when the 
force could justifiably have been employed to effect the arrest under which 
the person is in custody, except that a guard or other person authorized to 
act as a peace officer is justified in using any force, including deadly force, 
which he believes to be immediately necessary to prevent the escape of a 
person from a jail, prison, or other institution for the detention of persons 
charged with or convicted of a crime.

(4) Use of force by private person assisting an unlawful arrest.

(a) A private person who is summoned by a peace officer to assist in 
effecting an unlawful arrest, is justified in using any force which he 
would be justified in using if the arrest were lawful, provided that he 
does not believe the arrest is unlawful.

(b) A private person who assists another private person in effecting an
unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that:

(A) he believes the arrest is lawful; and

(B) the arrest would be lawful if the facts were as he believes them to be.

(5) Use of force to prevent suicide or the commission of a crime.

(a) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(A) any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(B) the use of deadly force is not in any event justifiable under this subsection unless:

1. the actor believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

2. the actor believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

(b) The justification afforded by this subsection extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

18-308. USE OF FORCE BY PERSONS WITH SPECIAL
RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS. —
The use of force upon or toward the person of another is justifiable if:

(1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and:
   (a) the force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his misconduct; and
   (b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress or gross degradation; or
(2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and:
   (a) the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and
   (b) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subsection (1)(b) of this section; or
(3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person; and
   (a) the force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution, for his care and custody, for the maintenance of reasonable discipline in such institution; and
   (b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation; or
(4) The actor is a doctor or other therapist or a person assisting him at his direction; and
   (a) the force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and
   (b) the treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent or guardian or other person legally competent to consent in his
behave, or the treatment is administered in an emergency when the
actor believes that no one competent to consent can be consulted and
that a reasonable person, wishing to safeguard the welfare of the
patient, would consent; or

(5) The actor is a warden or other authorized official of a correctional
institution; and

(a) he believes that the force used is necessary for the purpose of
enforcing the lawful rules or procedures of the institution, unless his
belief in the lawfulness of the rules or procedure sought to be enforced
is erroneous and his error is due to ignorance or mistake as to the
provisions of this code, any other provision of the criminal law or the
law governing the administration of the institution; and
(b) if deadly force is used, its use is otherwise justifiable under this
chapter; or

(6) The actor is a person responsible for the safety of a vessel or an
aircraft or a person acting at his direction; and

(a) he believes that the force used is necessary to prevent interference
with the operation of the vessel or aircraft or obstruction of the
execution of a lawful order, unless his belief in the lawfulness of the
order is erroneous and his error is due to ignorance or mistake as to the
law defining his authority; and
(b) if deadly force is used, its use is otherwise justifiable under this
chapter; or

(7) The actor is a person who is authorized or required by law to
maintain order or decorum in a vehicle, train or other carrier or in a place
where others are assembled, and:

(a) he believes that the force used is necessary for such purpose; and
(b) the force used is not designed to cause or known to create a
substantial risk of causing death, bodily harm, or extreme mental
distress.

18-309. MISTAKE OF LAW AS TO UNLAWFULNESS OF FORCE
OR LEGALITY OF ARREST – RECKLESS OR NEGLIGENT USE OF
OTHERWISE JUSTIFIABLE FORCE – RECKLESS OR NEGLIGENT
INJURY OR RISK OF INJURY TO INNOCENT PERSONS.  (1) The
justification afforded by sections 18-304 through 18-307 inclusive of this
code, is unavailable when:

(a) the actor's belief in the unlawfulness of the force or conduct
against which he employs protective force or his belief in the lawfulness
of an arrest which he endeavors to effect by force is erroneous; and
(b) his error is due to ignorance or mistake as to the provisions of this
code, any other provision of the criminal law or the law governing the
legality of an arrest or search.

(2) When the actor believes that the use of force upon or toward the
person of another is necessary for any of the purposes for which such belief
would establish a justification under sections 18-303 through 18-308,
inclusive of this code, but the actor is reckless or negligent in having such
belief or in acquiring or failing to acquire any knowledge or belief which is
material to the justifiability of his use of force, the justification afforded by
those sections is unavailable in a prosecution for an offense for which
recklessness or negligence, as the case may be, suffices to establish
culpability.

(3) When the actor is justified under sections 18-303 through 18-308
inclusive of this code, in using force upon or toward the person of another
but he recklessly or negligently injures or creates a risk of injury to innocent
persons, the justification afforded by those sections is unavailable in the
prosecution for such recklessness or negligence towards innocent persons.

18-310. JUSTIFICATION IN PROPERTY CRIMES. — Conduct
involving the appropriation, seizure or destruction of, damage to, intrusion
on or interference with property is justifiable under circumstances which
would establish a defense of privilege in a civil action based thereon, unless:

(1) This code or the law defining the offense deals with the specific
situation involved; or

(2) A legislative purpose to exclude the justification claimed otherwise
plainly appears.

18-311. DEFINITIONS. — In this chapter, unless a different meaning
plainly is required:

(1) "Unlawful force" means force, including confinement, which is
employed without the consent of the person against whom it is directed and
the employment of which constitutes an offense or actionable tort or would
constitute such offense or tort except for a defense (such as the absence of
intent, negligence, or mental capacity; duress; youth; or diplomatic status)
not amounting to a privilege to use the force. Assent constitutes consent,
within the meaning of this section, whether or not it otherwise is legally
effective, except assent to the infliction of death or serious bodily harm.

(2) "Deadly force" means force which the actor uses with the purpose
of causing or which he knows to create a substantial risk of causing death or
serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

(3) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.

CHAPTER 4
RESPONSIBILITY

18-401. MENTAL ILLNESS AS DEFENSE. — (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(2) As used in this act, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

18-402. ADMISSIBILITY OF EVIDENCE OF MENTAL DISEASE — CONSIDERATION BY JURY CONCERNING PUNISHMENT. — (1) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

(2) Whenever the jury or the court is authorized to determine or to recommend whether or not the defendant shall be sentenced to death or imprisonment upon conviction, evidence that the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect is admissible in favor of sentence of imprisonment.

18-403. MENTAL ILLNESS AN AFFIRMATIVE DEFENSE — NOTICE OF PURPOSE TO REPLY THEREON — VERDICT. — (1) Mental disease or defect excluding responsibility is an affirmative defense.

(2) Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within ten (10) days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on such defense.
(3) When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

18-404. LACK OF CAPACITY TO UNDERSTAND PROCEEDINGS – DELAY OF TRIAL. – No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.

18-405. EXAMINATION OF DEFENDANT – APPOINTMENT OF PSYCHIATRISTS – HOSPITALIZATION – REPORT. – (1) Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed as set forth in this section, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist or shall request the state board of health to designate at least one qualified psychiatrist to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(2) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(3) The report of the examination shall include the following:
   (a) a description of the nature of the examination;
   (b) a diagnosis of the mental condition of the defendant;
   (c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
   (d) when a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and
   (e) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.
If the examination can not be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

18-406. DETERMINATION OF FITNESS OF DEFENDANT TO PROCEED — SUSPENSION OF PROCEEDING AND COMMITMENT OF DEFENDANT — POST-COMMITMENT HEARING. — (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 18-405 of this code, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrist who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsections (3) and (4) of this section, and the court shall commit him to the custody of the state board of health to be placed in an appropriate institution of the state board of health for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the state board of health or its duly authorized representative or the prosecuting attorney, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution of the state board of health.

(3) At any time within ninety (90) days after commitment as provided in subsection (2) of this section, or at any later time with permission of the court granted for good cause, the defendant or his counsel or the state board of health may apply for a special post-commitment hearing. If the
application is made by or on behalf of a defendant not represented by
counsel, he shall be afforded a reasonable opportunity to obtain counsel, and
if he lacks funds to do so, counsel shall be assigned by the court. The
application shall be granted only if the counsel for the defendant satisfies the
court by affidavit or otherwise that as an attorney he has reasonable grounds
for a good faith belief that his client has, on the facts and the law, a defense
to the charge other than mental disease or defect excluding responsibility.

(4) If the motion for a special post-commitment hearing is granted, the
hearing shall be by the court without a jury. No evidence shall be offered at
the hearing by either party on the issue of mental disease or defect as a
defense to, or in mitigation of, the crime charged. After hearing, the court
may in an appropriate case quash the indictment or other charge, or find it
to be defective or insufficient, or determine that it is not proved beyond a
reasonable doubt by the evidence, or otherwise terminate the proceedings on
the evidence or the law. In any such case, unless all defects in the
proceedings are promptly cured, the court shall terminate the commitment
ordered under subsection (2) of this section and order the defendant to be
discharged or, subject to the law governing the civil commitment of persons
suffering from mental disease or defect, order the defendant to be
committed to an appropriate institution of the state board of health.

18-407. ACQUITTAL ON GROUND OF MENTAL ILLNESS
EXAMINATION BY PSYCHIATRIST OF DEFENDANT’S CHOICE —
PSYCHIATRISTS AS WITNESSES. — (1) If the report filed pursuant to
section 18-405 of this code, finds that the defendant at the time of the
criminal conduct charged suffered from a mental disease or defect which
substantially impaired his capacity to appreciate the wrongfulness of his
conduct or to conform his conduct to the requirements of law, and the
court, after a hearing if a hearing is requested by the prosecuting attorney or
the defendant, is satisfied that such impairment was sufficient to exclude
responsibility, the court on motion of the defendant shall enter judgment of
acquittal on the ground of mental disease or defect excluding responsibility.

(2) When, notwithstanding the report filed pursuant to section 18-405
of this code, the defendant wishes to be examined by a qualified psychiatrist
or other expert of his own choice, such examiner shall be permitted to have
reasonable access to the defendant for the purpose of such examination.

(3) Upon the trial, the psychiatrists who reported pursuant to section
18-405 of this code, may be called as witnesses by the prosecution, the
defendant or the court. If the issue is being tried before a jury, the jury may
be informed that the psychiatrists were designated by the court or by the
state board of health at the request of the court, as the case may be. If called
by the court, the witness shall be subject to cross-examination by the
prosecution and by the defendant. Both the prosecution and the defendant
may summon any other qualified psychiatrist or other expert to testify, but
no one who has not examined the defendant shall be competent to testify to
an expert opinion with respect to the mental condition or responsibility of
the defendant, as distinguished from the validity of the procedure followed
by, or the general scientific propositions stated by, another witness.

(4) When a psychiatrist or other expert who has examined the
defendant testifies concerning his mental condition, he shall be permitted to
make a statement as to the nature of his examination, his diagnosis of the
mental condition of the defendant at the time of the commission of the
offense charged and his opinion as to the extent, if any, to which the
capacity of the defendant to appreciate the wrongfulness of his conduct or
to conform his conduct to the requirements of law or to have a particular
state of mind which is an element of the offense charged was impaired as a
result of mental disease or defect at that time. He shall be permitted to make
any explanation reasonably serving to clarify his diagnosis and opinion and
may be cross-examined as to any matter bearing on his competency or
credibility or the validity of his diagnosis or opinion.

18-408. COMMITMENT OF ACQUITTED DEFENDANT
CONDITIONAL RELEASE – REVOCATION OF RELEASE WITHIN FIVE
YEARS. – (1) When a defendant is acquitted on the ground of mental
disease or defect excluding responsibility, the court shall order him to be
committed to the custody of the state board of health to be placed in an
appropriate institution for custody, care and treatment.

(2) If the state board of health is of the view that a person committed
to its custody, pursuant to subsection (1) of this section, may be discharged
or released on condition without danger to himself or to others, it shall make
application for the discharge or release of such person in a report to the
court by which such person was committed and shall transmit a copy of such
application and report to the prosecuting attorney of the county from which
the defendant was committed. The court shall thereupon appoint at least
two (2) qualified psychiatrists to examine such person and to report within
sixty (60) days, or such longer period as the court determines to be
necessary for the purpose, their opinion as to his mental condition. To
facilitate such examination and the proceedings thereon, the court may
cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the state board of health as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed pursuant to subsection (2) of this section and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the state board of health, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(4) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the state board of health, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the state board of health. However, no such application by a committed person need be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment, and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge.

18-409. ADMISSIBILITY OF STATEMENTS BY PSYCHIATRICALLY EXAMINED PERSON. — A statement made by a person subjected to psychiatric examination or treatment pursuant to
sections 18-405, 18-406 or 18-408 of this code, for the purposes of such examination or treatment shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt of the crime charged.

18-410. CRIMINAL TRIAL OF JUVENILES BARRED — EXCEPTIONS — JURISDICTIONAL HEARING. — (1) A person shall not be tried for or convicted of an offense if:

(a) at the time of the conduct charged to constitute the offense he was less than fourteen (14) years of age; or
(b) at the time of the conduct charged to constitute the offense he was not less than fourteen (14) nor more than seventeen (17) years of age, unless:

(A) a court of this state has no jurisdiction over him pursuant to chapter 18, title 16, Idaho Code, or
(B) the court having jurisdiction pursuant to chapter 18, title 16, Idaho Code, has entered an order waiving jurisdiction and consenting to the institution of criminal proceedings against him.

(2) No court shall have jurisdiction to try or convict a person of an offense if criminal proceedings against him are barred by subsection (1) of this section. When it appears that a person charged with the commission of an offense may be of such an age that criminal proceedings may be barred under subsection (1) of this section, the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the criminal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the court having jurisdiction pursuant to chapter 18, title 16, Idaho Code, and the case, including all papers and processes relating thereto, shall be transferred.

CHAPTER 5
INCHOATE CRIMES

18-501. CRIMINAL ATTEMPT. — (1) Definition of attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or
(b) when causing a particular result is an element of the crime, does or
omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or
(c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) Conduct which may be held substantial step under subsection (1)(c) of this section. Conduct shall not be held to constitute a substantial step under subsection (1)(c) of this section unless it is strongly corroborative of the actor's criminal purpose. Without negativing the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;
(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
(c) reconnoitering the place contemplated for the commission of the crime;
(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;
(e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;
(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;
(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(3) Conduct designed to aid another in commission of a crime. A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under section 18-206 of this code, if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) Renunciation of criminal purpose. When the actor's conduct would otherwise constitute an attempt under subsection (1)(b) or (1)(c) of this section, it is an affirmative defense that he abandoned his effort to commit
the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this chapter, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

18-502. CRIMINAL SOLICITATION. — (1) Definition of solicitation. A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

(2) Uncommunicated solicitation. It is immaterial under subsection (1) of this section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.

(3) Renunciation of criminal purpose. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

18-503. CRIMINAL CONSPIRACY. — (1) Definition of conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(a) agrees with such other person or persons that they or one (1) or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(2) Scope of conspiratorial relationship. If a person guilty of conspiracy, as defined by subsection (1) of this section, knows that a person
with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

(3) Conspiracy with multiple criminal objectives. If a person conspires to commit a number of crimes, he is guilty of only one (1) conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Joinder and venue in conspiracy prosecutions.

(a) Subject to the provisions of paragraph (b) of this subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:

(A) they are charged with conspiring with one another; or
(B) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(b) In any joint prosecution under paragraph (a) of this subsection:

(A) no defendant shall be charged with a conspiracy in any county other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and
(B) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and
(C) the court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

(5) Overt act. No person may be convicted of conspiracy to commit a crime, other than a felony of the first or second degree, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(6) Renunciation of criminal purpose. It is an affirmative defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(7) Duration of conspiracy. For purposes of section 18-106(4) of this code:
(a) conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and
(b) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and
(c) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

18-504. INCAPACITY, IRRESPONSIBILITY OR IMMUNITY OF PARTY TO SOLICITATION OR CONSPIRACY. — (1) Except as provided in subsection (2) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:
(a) he or the person whom he solicits or with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if he believes that one (1) of them does; or
(b) the person whom he solicits or with whom he conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime.
(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under section 18-206(5) or section 18-206(6)(a) or (b) of this code.

18-505. GRADING OF CRIMINAL ATTEMPT, SOLICITATION AND CONSPIRACY — MITIGATION IN CASES OF LESSER DANGER — MULTIPLE CONVICTIONS BARRED. — (1) Grading. Except as otherwise provided in this section, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or is an object of the conspiracy. An attempt, solicitation or conspiracy to commit a capital crime or a felony of the first degree is a felony of the second degree.
(2) Mitigation. If the particular conduct charged to constitute a criminal attempt, solicitation or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the
actor presents a public danger warranting the grading of such offense under this section, the court shall exercise its power under section 18-2210 of this code, to enter judgment and impose sentence for a crime of lower grade or degree or, in extreme cases, may dismiss the prosecution.

(3) Multiple convictions. A person may not be convicted of more than one (1) offense defined by this chapter for conduct designed to commit or to culminate in the commission of the same crime.

18-506. POSSESSING INSTRUMENTS OF CRIME — WEAPONS. —

(1) Criminal instruments generally. A person commits a misdemeanor if he possesses any instrument of crime with purpose to employ it criminally. “Instrument of crime” means:

(a) anything specially made or specially adapted for criminal use; or
(b) anything commonly used for criminal purposes and possessed by the actor under circumstances which do not negative unlawful purposes.

(2) Presumption of criminal purpose from possession of weapon. If a person possesses a firearm or other weapon on or about his person, in a vehicle occupied by him, or otherwise readily available for use, it is presumed that he had the purpose to employ it criminally unless:

(a) the weapon is possessed in the actor’s home or place of business;
(b) the actor is licensed or otherwise authorized by law to possess such weapon; or
(c) the weapon is of a type commonly used in lawful sport. “Weapon” means anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have; the term includes a firearm which is not loaded or lacks a clip or other component to render it immediately operable, and components which can readily be assembled into a weapon.

(3) Presumptions as to possession of criminal instruments in automobiles. Where a weapon or other instrument of crime is found in an automobile, it is presumed to be in the possession of the occupant if there is but one (1). If there is more than one (1) occupant, it is presumed to be in the possession of all, except under the following circumstances:

(a) where it is found upon the person of one (1) of the occupants;
(b) where the automobile is not a stolen one and the weapon or instrument is found out of view in a glove compartment, car trunk, or other enclosed customary depository, in which case it is presumed to be in the possession of the occupant or occupants who own or have authority to operate the automobile;
(c) in the case of a taxicab, a weapon or instrument found in the passengers’ portion of the vehicle is presumed to be in the possession of all the passengers, if there are any, and, if not, in the possession of the driver.

CHAPTER 6
CRIMINAL HOMICIDE

18-601. DEFINITIONS. – In chapters 6 through 9 of this code, unless a different meaning plainly is required:

(1) “Human being” means a person who has been born and is alive;
(2) “Bodily injury” means physical pain, illness or any impairment of physical condition;
(3) “Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;
(4) “Deadly weapon” means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

18-602. CRIMINAL HOMICIDE. – (1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

(2) Criminal homicide is murder, manslaughter or negligent homicide.

18-603. MURDER. – (1) Except as provided in section 18-604(1)(b) of this code, criminal homicide constitutes murder when:

(a) it is committed purposely or knowingly; or
(b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary, kidnaping or felonious escape.

(2) Murder is a felony of the first degree, but a person convicted of murder may be sentenced to death, as provided in section 18-607 of this code.

18-604. MANSLAUGHTER. – (1) Criminal homicide constitutes manslaughter when:

(a) it is committed recklessly; or
(b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

(2) Manslaughter is a felony of the second degree.

18-605. NEGLIGENT HOMICIDE. — (1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) Negligent homicide is a felony of the third degree.

18-606. CAUSING OR AIDING SUICIDE. — (1) Causing suicide as criminal homicide. A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.

(2) Aiding or soliciting suicide as an independent offense. A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor.

18-607. SENTENCE OF DEATH FOR MURDER — FURTHER PROCEEDINGS TO DETERMINE SENTENCE. — (1) Death sentence excluded. When a defendant is found guilty of murder, the court shall impose a sentence for a felony of the first degree if it is satisfied that:

(a) none of the aggravating circumstances enumerated in subsection (3) of this section was established by the evidence at the trial or will be established if further proceedings are initiated under subsection (2) of this section; or

(b) substantial mitigating circumstances, established by the evidence at the trial, call for leniency; or

(c) the defendant, with the consent of the prosecuting attorney and the approval of the court, pleaded guilty to murder as a felony of the first degree; or

(d) the defendant's physical or mental condition calls for leniency; or

(e) although the evidence suffices to sustain the verdict, it does not foreclose all doubt respecting the defendant's guilt.

(2) Determination by court or by court and jury. Unless the court imposes sentence under subsection (1) of this section, it shall conduct a separate proceeding to determine whether the defendant should be sentenced for a felony of the first degree or sentenced to death. The
proceeding shall be conducted before the court alone if the defendant was convicted by a court sitting without a jury or upon his plea of guilty or if the prosecuting attorney and the defendant waive a jury with respect to sentence. In other cases it shall be conducted before the court sitting with the jury which determined the defendant's guilt or, if the court for good cause shown discharges that jury, with a new jury empanelled for the purpose.

In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition and any of the aggravating or mitigating circumstances enumerated in subsections (3) and (4) of this section. Any such evidence, not legally privileged, which the court deems to have probative force, may be received, regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant's counsel is accorded a fair opportunity to rebut such evidence. The prosecuting attorney and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

The determination whether sentence of death shall be imposed shall be in the discretion of the court, except that when the proceeding is conducted before the court sitting with a jury, the court shall not impose sentence of death unless it submits to the jury the issue whether the defendant should be sentenced to death or to imprisonment and the jury returns a verdict that the sentence should be death. If the jury is unable to reach a unanimous verdict, the court shall dismiss the jury and impose sentence for a felony of the first degree.

The court, in exercising its discretion as to sentence, and the jury, in determining upon its verdict, shall take into account the aggravating and mitigating circumstances enumerated in subsections (3) and (4) of this section, and any other facts that it deems relevant, but it shall not impose or recommend sentence of death unless it finds one (1) of the aggravating circumstances enumerated in subsection (3) of this section, and further finds that there are no mitigating circumstances sufficiently substantial to call for leniency. When the issue is submitted to the jury, the court shall so instruct and also shall inform the jury of the nature of the sentence of imprisonment that may be imposed, including its implication with respect to possible release upon parole, if the jury verdict is against sentence of death.

(3) **Aggravating circumstances.**
(a) the murder was committed by a convict under sentence of imprisonment;
(b) the defendant was previously convicted of another murder or of a felony involving the use of threat of violence to the person;
(c) at the time the murder was committed the defendant also committed another murder;
(d) the defendant knowingly created a great risk of death to many persons;
(e) the murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary or kidnaping;
(f) the murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from lawful custody;
(g) the murder was committed for pecuniary gain;
(h) the murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(4) Mitigating circumstances.
(a) the defendant has no significant history of prior criminal activity;
(b) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;
(c) the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act;
(d) the murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct;
(e) the defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor;
(f) the defendant acted under duress or under the domination of another person;
(g) at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;
(h) the youth of the defendant at the time of the crime.
CHAPTER 7

ASSAULT – RECKLESS ENDANGERING – THREATS

18-701. DEFINITIONS. — In this chapter, the definitions given in section 18-601 of this code apply unless a different meaning plainly is required.

18-702. ASSAULT. — (1) Simple assault. A person is guilty of simple assault if he:

(a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(b) negligently causes bodily injury to another with a deadly weapon; or

(c) attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

(2) Aggravated assault. A person is guilty of aggravated assault if he:

(a) attempts to cause serious bodily injury to another or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

Aggravated assault under paragraph (a) is a felony of the second degree; aggravated assault under paragraph (b) is a felony of the third degree.

18-703. RECKLESSLY ENDANGERING ANOTHER PERSON. — A person commits a misdemeanor if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not the actor believed the firearm to be loaded.

18-704. TERRORISTIC THREATS. — A person is guilty of a felony of the third degree if he threatens to commit any crime of violence with purpose to terrorize another, or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

CHAPTER 8

KIDNAPPING AND RELATED OFFENSES — COERCION

18-801. DEFINITIONS. — In this chapter, the definitions given in
section 18-601 of this code, apply unless a different meaning plainly is required.

18-802. KIDNAPING. — A person is guilty of kidnaping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another with any of the following purposes:

(1) To hold for ransom or reward, or as a shield or hostage; or
(2) To facilitate commission of any felony or flight thereafter; or
(3) To inflict bodily injury on or to terrorize the victim or another; or
(4) To interfere with the performance of any governmental or political function.

Kidnaping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. A removal or confinement is unlawful within the meaning of the section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of fourteen (14) or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

18-803. FELONIOUS RESTRAINT. — A person commits a felony of the third degree if he knowingly:

(1) Restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or
(2) Holds another in a condition of involuntary servitude.

18-804. FALSE IMPRISONMENT. — A person commits a misdemeanor if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

18-805. INTERFERENCE WITH CUSTODY. — (1) Custody of children. A person commits an offense if he knowingly or recklessly takes or entices any child under the age of eighteen (18) from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so. It is an affirmative defense that:

(a) the actor believed that his action was necessary to preserve the child from danger to its welfare; or
(b) the child, being at the time not less than fourteen (14) years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child.

Proof that the child was below the critical age gives rise to a presumption that the actor knew the child’s age or acted in reckless disregard
thereof. The offense is a misdemeanor unless the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his conduct would cause serious alarm for the child's safety, or in reckless disregard of a likelihood of causing such alarm, in which case the offense is a felony of the third degree.

(2) Custody of committed persons. A person is guilty of a misdemeanor if he knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

18-806. CRIMINAL COERCION. — (1) Offense defined. A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to his detriment, he threatens to:

(a) commit any criminal offense; or
(b) accuse anyone of a criminal offense; or
(c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
(d) take or withhold action as an official, or cause an official to take or withhold action.

It is an affirmative defense to prosecution based on subsections (b), (c), or (d) of this section that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(2) Grading. Criminal coercion is a misdemeanor unless the threat is to commit a felony or the actor's purpose is felonious, in which case the offense is a felony of the third degree.

CHAPTER 9
SEXUAL OFFENSES

18-901. DEFINITIONS. — In this chapter, the definitions given in section 18-601 of this code apply unless a different meaning plainly is required.
In addition, the following definitions also apply to this chapter:

(1) "Sexual intercourse" includes intercourse per os or per anum, with some penetration however slight; emission is not required.

(2) "Deviate sexual intercourse" means sexual intercourse per os or per anum between human beings who are not husband and wife, and any form of sexual intercourse with an animal.

18-902. RAPE AND RELATED OFFENSES. — (1) Rape. A male who has sexual intercourse with a female not his wife is guilty of rape if:

(a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnaping, to be inflicted on anyone; or

(b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(c) the female is unconscious; or

(d) the female is less than twelve (12) years old.

Rape is a felony of the second degree unless (A) in the course thereof the actor inflicts serious bodily injury upon anyone, or (B) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties, in which case the offense is a felony of the first degree. Sexual intercourse includes intercourse per os or per anum, with some penetration however slight; emission is not required.

(2) Gross sexual imposition. A male who has sexual intercourse with a female not his wife commits a felony of the third degree if:

(a) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or

(b) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or

(c) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband.

18-903. DEVIATE SEXUAL INTERCOURSE BY FORCE OR IMPOSITION. — (1) By force or its equivalent. A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the second degree if:

(a) he compels the other person to participate by force or by threat of
imminent death, serious bodily injury, extreme pain or kidnaping, to be inflicted on anyone; or
(b) he has substantially impaired the other person’s power to appraise or control his conduct, by administering or employing without the knowledge of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or
(c) the other person is unconscious; or
(d) the other person is less than twelve (12) years old.

Deviate sexual intercourse means sexual intercourse per os or per anum between human beings who are not husband and wife, and any form of sexual intercourse with an animal.

(2) By other imposition. A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the third degree if:
(a) he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or
(b) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or
(c) he knows that the other person submits because he is unaware that a sexual act is being committed upon him.

18-904. CORRUPTION OF MINORS AND SEDUCTION. 
(1) Offense defined. A male who has sexual intercourse with a female not his wife, or any person who engages in deviate sexual intercourse or causes another to engage in deviate sexual intercourse, is guilty of an offense if:
(a) the other person is less than sixteen (16) years old and the actor is at least four (4) years older than the other person; or
(b) the other person is less than twenty-one (21) years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or
(c) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

(2) Grading. An offense under paragraphs (a), (b) and (c) of subsection (1) of this code is a felony of the third degree.

18-905. SEXUAL ASSAULT. ... A person who has sexual contact with another not his spouse or causes such other to have sexual contact with him, is guilty of sexual assault if:
(1) He knows that the contact is offensive to the other person; or
(2) He knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct; or
(3) He knows that the other person is unaware that a sexual act is being committed; or
(4) He has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or
(5) The other person is less than sixteen (16) years old and the actor is at least four (4) years older than the other person; or
(6) The other person is less than twenty-one (21) years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or
(7) The other person is in custody of the law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or
(8) The other person is less than twelve (12) years old.

Sexual contact, for purposes of this section, is any touch of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire.

An offense under subsections (1), (2), (3), (4), (5), (6) and (7) of this section is a misdemeanor; an offense under subsection (8) of this section is a felony of the second degree.

18-906. INDECENT EXPOSURE. — A person commits a misdemeanor if, for the purpose of arousing or gratifying sexual desire for himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm.

18-907. PROVISIONS GENERALLY APPLICABLE TO CHAPTER 9. — (1) Mistake as to age. Whenever in this chapter the criminality of conduct depends on a child's being below the age of twelve (12), it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than twelve (12). When criminality depends on the child's being below a critical age other than twelve (12), it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.
(2) Spouse relationships. Whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse or conduct by a woman, this shall not preclude conviction of a spouse or woman as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) Prompt complaint. No prosecution may be instituted or maintained under this chapter unless the alleged offense was brought to the notice of public authority within three (3) months of its occurrence or, where the alleged victim was less than twelve (12) years old or otherwise incompetent to make complaint, within three (3) months after a parent, guardian or other competent person specially interested in the victim learns of the offense.

(4) Testimony of complainants. No person shall be convicted of any offense under this chapter upon the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial. In any prosecution before a jury for an offense under this chapter, the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private.

CHAPTER 10
ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DESTRUCTION

18-1001. ARSON AND RELATED OFFENSES. — (1) A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of:

(a) destroying a building or occupied structure of another; or
(b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss.

(2) Reckless burning or exploding. A person commits a felony of the third degree if he purposely starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly:

(a) places another person in danger of death or bodily injury; or
(b) places a building or occupied structure of another in danger of damage or destruction;
(c) it shall be an affirmative defense to prosecution under this subsection that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.
(3) Failure to control or report dangerous fire. A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm, commits a misdemeanor if:
   (a) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or
   (b) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

(4) Definitions. "Occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this section, if anyone other than the actor has possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

18-1002. CAUSING OR RISKING CATASTROPHE. — (1) Causing catastrophe. A person who causes a catastrophe by explosion, fire, flood, avalanche, or collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a felony of the second degree if he does so purposely or knowingly, or a felony of the third degree if he does so recklessly.

(2) Risking catastrophe. A person is guilty of a misdemeanor if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in subsection (1) of this section.

(3) Failure to prevent catastrophe. A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits a misdemeanor if:
   (a) he knows that he is under an official, contractual or other legal duty to take such measures; or
   (b) he did or assented to the act causing or threatening the catastrophe.

(4) Abandonment of certain appliances. A person who abandons or permits to remain in an abandoned state on his premises or on premises over which he exercises control, any ice box, refrigerator, deep freeze, or similar appliance having a door which fastens automatically and which cannot be opened from the inside is guilty of a misdemeanor. "Abandon" as used in this paragraph means leaving such appliance in an unattended and
unenclosed place without having first removed the lock or the hinges by which the door to said appliance is attached to the body of the appliance.

18-1003. CRIMINAL MISCHIEF. — (1) Offense defined. A person is guilty of criminal mischief if he:
(a) damages tangible property of another recklessly, purposely, or by negligence in the employment of fire, explosives, or other dangerous means listed in section 18-1002(1) of this code; or
(b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or
(c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(2) Grading. Criminal mischief is a felony of the third degree if the actor purposely causes pecuniary loss in excess of five thousand dollars ($5,000), or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a misdemeanor if the actor purposely causes pecuniary loss in excess of one hundred dollars ($100), or a petty misdemeanor if he purposely or recklessly causes pecuniary loss in excess of twenty-five dollars ($25). Otherwise criminal mischief is a violation.

CHAPTER 11
BURGLARY AND OTHER CRIMINAL INTRUSION
18-1101. DEFINITIONS. — In this chapter, unless a different meaning plainly is required:
(1) “Occupied structure” means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.
(2) “Night” means the period between thirty (30) minutes past sunset and thirty (30) minutes before sunrise.

18-1102. BURGLARY. — (1) Burglary defined. A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

(2) Grading. Burglary is a felony of the second degree if it is perpetrated in the dwelling of another at night, or if, in the course of committing the offense the actor:
(a) purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or
(b) is armed with explosives or a deadly weapon.

Otherwise, burglary is a felony of the third degree. An act shall be deemed "in the course of committing an offense" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(3) Multiple convictions. A person may not be convicted both for burglary and for the offense which was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a felony of the first or second degree.

18-1103. CRIMINAL TRESPASS. — (1) Buildings and occupied structures. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(2) Defiant trespasser. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
   (a) actual communication to the actor; or
   (b) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
   (c) fencing or other enclosure manifestly designed to exclude intruders.

An offense under this subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise it is a violation.

(3) Defenses. It is an affirmative defense to prosecution under this section that:
   (a) a building or occupied structure involved in an offense under subsection (1) of this section was abandoned; or
   (b) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
   (c) the actor reasonably believed that the owner of the premises, or other person, empowered to license access thereto, would have licensed him to enter or remain.

CHAPTER 12
ROBBERY

18-1201. ROBBERY. — (1) Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:
(a) inflicts serious bodily injury upon another; or
(b) threatens another with or purposely puts him in fear of immediate serious bodily injury; or
(c) commits or threatens immediately to commit any felony of the first or second degree.

An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission.

(2) Grading. Robbery is a felony of the second degree, except that it is a felony of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury.

CHAPTER 13
THEFT AND RELATED OFFENSES
18-1301. DEFINITIONS. — In this chapter, unless a different meaning plainly is required:

(1) “Deprive” means:
(a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or
(b) to dispose of the property so as to make it unlikely that the owner will recover it.

(2) “Financial institution” means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(3) “Government” means the United States, any state, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

(4) “Movable property” means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. “Immovable property” is all other property.

(5) “Obtain” means:
(a) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or
(b) in relation to labor or service, to secure performance thereof.

(6) "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

(7) "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

18-1302. CONSOLIDATION OF THEFT OFFENSES — GRADING — PROVISIONS APPLICABLE TO THEFT GENERALLY.

(1) Consolidation of theft offenses. Conduct denominated theft in this chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(2) Grading of theft offenses.

(a) Theft constitutes a felony of the third degree if the amount involved exceeds two hundred dollars ($200), or if the property stolen is a firearm, automobile, airplane, motorcycle, or motorboat, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

(b) Theft not within the preceding paragraph constitutes a misdemeanor, except that if the property was not taken from the person or by threat, or in breach of a fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was less than fifty dollars ($50), the offense constitutes a petty misdemeanor.

(c) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the
actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one (1) scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(3) Claim of right. It is an affirmative defense to prosecution for theft that the actor:

(a) was unaware that the property or service was that of another; or
(b) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
(c) took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

18-1303. THEFT BY UNLAWFUL TAKING OR DISPOSITION. —

(1) Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

(2) Immovable property. A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with purpose to benefit himself or another not entitled thereto.

18-1304. THEFT BY DECEPTION. — A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgment of a transaction; or

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.
18-1305. THEFT BY EXTORTION. — A person is guilty of theft if he purposely obtains property of another by threatening to:
(1) Inflict bodily injury on anyone or commit any other criminal offense; or
(2) Accuse anyone of a criminal offense; or
(3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
(4) Take or withhold action as an official, or cause an official to take or withhold action; or
(5) Bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
(7) Inflict any other harm which would not benefit the actor.
It is an affirmative defense to prosecution based on subsections (2), (3) or (4) of this section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.
18-1306. THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE. — A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to the person entitled to have it.
18-1307. RECEIVING STOLEN PROPERTY. — (1) Receiving. A person is guilty of theft if he purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. “Receiving” means acquiring possession, control or title, or lending on the security of the property.
(2) Presumption of knowledge. The requisite knowledge or belief is presumed in the case of a dealer who:
(a) is found in possession or control of property stolen from two (2) or more persons on separate occasions; or
(b) has received stolen property in another transaction within the year preceding the transaction charged; or
(c) being a dealer in property of the sort received, acquires it for a consideration which he knows is far below its reasonable value.

"Dealer" means a person in the business of buying or selling goods.

18-1308. THEFT OF SERVICES. — (1) A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to void payment for the service. "Services" includes labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

18-1309. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED. — A person who purposely obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employee of the government or of a financial institution is presumed: (1) to know any legal obligation relevant to his criminal liability under this section, and (2) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

18-1310. UNAUTHORIZED USE OF AUTOMOBILES AND OTHER VEHICLES. — A person commits a misdemeanor if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to the prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he known of it.
18-1311. WILFUL CONCEALMENT OF GOODS, WARES OR MERCHANDISE. — Whoever, without authority, willfully conceals the goods, wares, or merchandise of any store or merchant, while still upon the premises of such store or merchant, commits a misdemeanor. Goods, wares or merchandise found concealed upon the person shall be prima facie evidence of a wilful concealment.

CHAPTER 14
FORGERY AND FRAUDULENT PRACTICES

18-1401. DEFINITIONS. — In this chapter, the definitions given in section 18-1301 of this code apply unless a different meaning plainly is required.

18-1402. FORGERY. — (1) Definition. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(a) alters any writing of another without his authority; or
(b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
(c) utters any writing which he knows to be forged in a manner specified in subsections (a) or (b) of this section.

"Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trade-marks, and other symbols of value, right, privilege or identification.

(2) Grading. Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by the government, or part of an issue of stock, bonds or other instruments representing interests in or claims against any property or enterprise. Forgery is a felony of the third degree if the writing is or purports to be, a will, deed, contract, release, commercial instrument, or other document, evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

18-1403. SIMULATING OBJECTS OF ANTIQUITY — RARITY, ETC. — A person commits a misdemeanor if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value
because of antiquity, rarity, source, or authorship which it does not possess.

18-1404. FRAUDULENT DESTRUCTION — REMOVAL OR CONCEALMENT OF RECORDABLE INSTRUMENTS. — A person commits a felony of the third degree if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument, or other writing for which the law provides public recording.

18-1405. TAMPERING WITH RECORDS. — A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

18-1406. BAD CHECKS. — A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.

18-1407. CREDIT CARDS. — A person commits an offense if he uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or canceled; or

(3) For any other reason his use of the card is unauthorized by the issuer.

It is an affirmative defense to prosecution under subsection (3) of this section if the actor proves by a preponderance of the evidence that he had the purpose and ability to meet all obligations to the issuer arising out of his use of the card. “Credit card” means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer. An offense under this section is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds two hundred dollars ($200); otherwise it is a misdemeanor.

18-1408. DECEPTIVE BUSINESS PRACTICES. — A person commits a misdemeanor if in the course of business he:
(1) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(4) Sells, offers or exposes for sale adulterated or mislabeled commodities. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage; or

(5) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or

(6) Makes a false or misleading written statement for the purpose of obtaining property or credit; or

(7) Makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

It is an affirmative defense to prosecution under this section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

18-1409. COMMERCIAL BRIBERY AND BREACH OF DUTY TO ACT DISINTERESTEDLY. — (1) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:

(a) agent, partner, or employee of another;

(b) trustee, guardian, or other fiduciary;

(c) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(d) officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(e) arbitrator or other purportedly disinterested adjudicator or referee.

(2) A person who holds himself out to the public as being engaged in
the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(3) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.

18-1410. RIGGING PUBLICLY EXHIBITED CONTEST. — (1) A person commits a misdemeanor if, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(a) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or
(b) tampers with any person, animal or thing.

(2) Soliciting or accepting benefit for rigging. A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit, the giving of which would be criminal under subsection (1) of this section.

(3) Participation in rigged contest. A person commits a misdemeanor if he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

18-1411. DEFRAUDING SECURED CREDITORS. — A person commits a misdemeanor if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest.

18-1412. FRAUD IN INSOLVENCY. — A person commits a misdemeanor if, knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, he:

(1) Destroys, removes, conceals, encumbers, transfers or otherwise deals with any property with purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(2) Knowingly falsifies any writing or record relating to the property; or
(3) Knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

18-1413. RECEIVING DEPOSITS IN A FAILING FINANCIAL INSTITUTION. — An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

(1) Due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and
(2) The person making the deposit or other payment is unaware of the precarious situation of the institution.

18-1414. MISAPPLICATION OF ENTRUSTED PROPERTY AND PROPERTY OF GOVERNMENT OR FINANCIAL INSTITUTION. — A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted. The offense is a misdemeanor if the amount involved exceeds fifty dollars ($50); otherwise it is a petty misdemeanor. "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

18-1415. SECURING EXECUTION OF DOCUMENTS BY DECEPTION. — A person commits a misdemeanor if by deception he causes another to execute any instrument affecting or purporting to affect or likely to affect the pecuniary interest of any person.

CHAPTER 15

OFFENSES AGAINST THE FAMILY

18-1501. BIGAMY AND POLYGAMY. — (1) Bigamy. A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(a) the actor believes that the prior spouse is dead; or
(b) the actor and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the actor to be alive; or
(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or

(d) the actor reasonably believes that he is legally eligible to remarry.

(2) Polygamy. A person is guilty of polygamy, a misdemeanor, if he marries or cohabits with more than one (1) spouse at a time in purported exercise of the right of plural marriage. The offense is a continuing one until all cohabitation and claim of marriage with more than one (1) spouse terminates. This section does not apply to parties to a polygamous marriage, lawful in the country of which they are residents, or nationals, while they are in transit through or temporarily visiting this state.

(3) Other party to bigamous or polygamous marriage. A person is guilty of bigamy or polygamy, as the case may be, if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy or polygamy.

18-1502. INCEST. — A person is guilty of incest, a felony in the third degree, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendent, a brother or sister of the whole or half blood, or an uncle, aunt, nephew, or niece of the whole blood. "Cohabit" means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

18-1503. ENDANGERING WELFARE OF CHILDREN. — A parent or guardian, or other person supervising the welfare of a child under eighteen (18) commits a misdemeanor if he knowingly endangers the child's welfare by violating a duty of care, protection or support. The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to be a violation of the duty of care to such child.

18-1504. PERSISTENT NON-SUPPORT. — A person commits a misdemeanor if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent.

CHAPTER 16
BRIBERY AND CORRUPT INFLUENCE

18-1601. DEFINITIONS. — In chapters 16 through 19 of this code unless a different meaning plainly is required:

(1) "Benefit" means gain or advantage, or anything regarded by the
beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(2) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(3) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

(4) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(5) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(6) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(7) "Public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses.

(8) "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

18-1602. BRIBERY IN OFFICIAL AND POLITICAL MATTERS. – A person is guilty of bribery, a felony of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
(3) Any benefit as consideration for a violation of a known legal duty as public servant or party official.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

18-1603. THREATS AND OTHER IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS. — (1) Offenses defined. A person commits an offense if he:

(a) threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with purpose to influence him to violate his known legal duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) Grading. An offense under this section is a misdemeanor unless the actor threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a felony of the third degree.

18-1604. COMPENSATION FOR PAST OFFICIAL BEHAVIOR. — A person commits a misdemeanor if he solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a misdemeanor if he offers, confers or agrees to confer, compensation, acceptance of which is prohibited by this section.

18-1605. RETALIATION FOR PAST OFFICIAL ACTION. — A
person commits a misdemeanor if he harms another by any unlawful acts in retaliation for anything lawfully done by the latter in the capacity of public servant.

18-1606. GIFTS TO PUBLIC SERVANTS BY PERSONS SUBJECT TO THEIR JURISDICTION. — (1) Regulatory and law enforcement officials. No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) Officials concerned with government contracts and pecuniary transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) Judicial and administrative officials. No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

(4) Legislative officials. No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in a bill, transaction or proceeding, pending or contemplated before the legislature or any committee or agency thereof.

(5) Exceptions. This section shall not apply to:
(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or
(b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or
(c) trivial benefits incidental to personal, professional or business
contacts and involving no substantial risk of undermining official
impartiality.

(6) Offering benefits prohibited. No person shall knowingly confer, or
offer or agree to confer, any benefit prohibited by the foregoing subsections.

(7) Grade of offense. An offense under this section is a misdemeanor.

18-1607. COMPENSATING PUBLIC SERVANT FOR ASSISTING
PRIVATE INTERESTS IN RELATION TO MATTERS BEFORE HIM.
(1) Receiving compensation. A public servant commits a misdemeanor if he
solicits, accepts or agrees to accept compensation for advice or other
assistance in preparing or promoting a bill, contract, claim, or other
transaction or proposal as to which he knows that he has or is likely to have
an official discretion to exercise.

(2) Paying compensation. A person commits a misdemeanor if he pays
or offers or agrees to pay compensation to a public servant with knowledge
that acceptance by the public servant is unlawful.

18-1608. SELLING POLITICAL ENDORSEMENT – SPECIAL
INFLUENCE. — (1) Selling political endorsement. A person commits a
misdemeanor if he solicits, receives, agrees to receive, or agrees that any
political party or other person shall receive any pecuniary benefit as
consideration for approval or disapproval of an appointment or advancement
in public service, or for approval or disapproval of any person or transaction
for any benefit conferred by an official or agency of the government.
"Approval" includes recommendations, failure to disapprove, or any other
manifestation of favor or acquiescence. "Disapproval" includes failure to
approve, or any other manifestation of disfavor or nonacquiescence.

(2) Other trading in special influence. A person commits a
misdemeanor if he solicits, receives or agrees to receive any pecuniary benefit
as consideration for exerting special influence upon a public servant or
procuring another to do so. "Special influence" means power to influence
through kinship, friendship, or other relationship apart from the merits of
the transaction.

(3) Paying for endorsement or special influence. A person commits a
misdemeanor if he offers, confers or agrees to confer any pecuniary benefit,
receipt of which is prohibited by this section.

CHAPTER 17
PERJURY AND OTHER FALSIFICATION IN OFFICIAL MATTERS

18-1701. DEFINITIONS. — In this chapter, unless a different meaning
plainly is required:
(1) The definitions given in section 18-1601 of this code apply; and

(2) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

18-1702. PERJURY. — (1) Offense defined. A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(2) Materiality. Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceedings. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(3) Irregularities no defense. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A documentation purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(4) Retraction. No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(5) Inconsistent statements. Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one (1) or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one (1) or the other was false and not believed by the defendant to be true.

(6) Corroboration. No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

18-1703. FALSE SWEARING. — (1) False swearing in official
matters. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a misdemeanor if:

(a) the falsification occurs in an official proceeding; or
(b) the falsification is intended to mislead a public servant in performing his official function.

(2) Other false swearing. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a petty misdemeanor, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Perjury provision applicable. Subsections (3) through (6) of section 18-1702 of this code apply to the present section.

18-1704. UNSWORN FALSIFICATION TO AUTHORITIES. — (1) In general. A person commits a misdemeanor if, with purpose to mislead the public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true; or
(b) purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading; or
(c) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) Statements under penalty. A person commits a petty misdemeanor if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(3) Perjury provisions applicable. Subsections (3) through (6) of section 18-1702 of this code apply to the present section.

18-1705. FALSE ALARMS TO AGENCIES OF PUBLIC SAFETY. — A person who knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.
18-1706. FALSE REPORTS TO LAW ENFORCEMENT AUTHORITIES. — (1) Falsely incriminating another. A person who knowingly gives false information to any law enforcement officer with purposes to implicate another commits a misdemeanor.

(2) Fictitious reports. A person commits a petty misdemeanor if he:
(a) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or
(b) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

18-1707. TAMPERING WITH WITNESSES AND INFORMANTS — RETALIATION AGAINST THEM. — (1) Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a witness or informant to:
(a) testify or inform falsely; or
(b) withhold any testimony, information, document or thing; or
(c) elude legal process summoning him to testify or supply evidence; or
(d) absent himself from any proceedings or investigation to which he has been legally summoned.

The offense is a felony of the third degree if the actor employs force, deception, threat or offer of pecuniary benefit. Otherwise it is a misdemeanor.

(2) Retaliation against witness or informant. A person commits a misdemeanor if he harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

(3) Witness or informant taking bribe. A person commits a felony of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection (1) (a) through (d) of this section.

18-1708. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. — A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he:
(1) Alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or
(2) Makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
18-1709. TAMPERING WITH PUBLIC RECORDS OR INFORMATION. — (1) Offense defined. A person commits an offense if he:
(a) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received by or kept by, the government for information or record, or required by law to be kept by others for information of the government; or
(b) makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a) of this section; or
(c) purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.
(2) Grading. An offense under this section is a misdemeanor unless the actor's purpose is to defraud or injure anyone, in which case the offense is a felony of the third degree.

18-1710. IMPERSONATING A PUBLIC SERVANT. — A person commits a misdemeanor if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

CHAPTER 18
OBSTRUCTING GOVERNMENTAL OPERATIONS — ESCAPES
18-1801. DEFINITIONS. — In this chapter, unless another meaning plainly is required, the definitions given in section 18-1601 of this code apply.

18-1802. OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION. — A person commits a misdemeanor if he purposely obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

18-1803. RESISTING ARREST OR OTHER LAW ENFORCEMENT. — A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant, or
anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

18-1804. HINDERING APPREHENSION OR PROSECUTION. — A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for crime, he:

(1) Harbors or conceals the other; or

(2) Provides or aids in providing a weapon, transportation, disguise or other means of avoiding prosecution or effecting escape; or

(3) Conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(4) Warns the other of impending discovery or apprehension, except that this subsection does not apply to a warning given in connection with an effort to bring another into compliance with law; or

(5) Volunteers false information to a law enforcement officer.

The offense is a felony of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a felony of the first or second degree. Otherwise it is a misdemeanor.

18-1805. AIDING CONSUMMATION OF CRIME. — A person commits an offense if he purposely aids another to accomplish an unlawful object of a crime, as by safeguarding the proceeds thereof or converting the proceeds into negotiable funds. The offense is a felony of the third degree if the principal offense was a felony of the first or second degree. Otherwise it is a misdemeanor.

18-1806. COMPOUNDING. — A person commits a misdemeanor if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense. It is an affirmative defense to prosecution under this section that the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.

18-1807. ESCAPE. — (1) Escape. A person commits an offense if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any
other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

(2) Permitting or facilitating escape. A public servant concerned in detention commits an offense if he knowingly or recklessly permits an escape. Any person who knowingly causes or facilitates an escape commits an offense.

(3) Effect of legal irregularity in detention. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to prosecution under this section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

(a) the escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or
(b) the detaining authority did not act in good faith under color of law.

(4) Grading of offenses. An offense under this section is a felony of the third degree where:

(a) the actor was under arrest for or detained on a charge of felony or following conviction of crime; or
(b) the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape; or
(c) a public servant concerned in detention of persons convicted of crime purposely facilitates or permits an escape from a detention facility.

Otherwise an offense under this section is a misdemeanor.

18-1808. IMPLEMENTS FOR ESCAPE ... OTHER CONTRABAND. —

(1) Escape implements. A person commits a misdemeanor if he unlawfully introduces within a detention facility, or unlawfully provides an inmate with, any weapon, tool or other thing which may be useful for escape. An inmate commits a misdemeanor if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any such implement of escape. "Unlawfully" means surreptitiously or contrary to law, regulation or order of the detaining authority.

(2) Other contraband. A person commits a petty misdemeanor if he provides an inmate with anything which the actor knows it is unlawful for the inmate to possess.
18-1809. BAIL JUMPING DEFAULT IN REQUIRED APPEARANCE. A person set at liberty by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place, commits a misdemeanor if, without lawful excuse, he fails to appear at that time and place. The offense constitutes a felony of the third degree where the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial or punishment. This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

CHAPTER 19
ABUSE OF OFFICE

18-1901. DEFINITIONS. — In this chapter, unless a different meaning plainly is required, the definitions given in section 18-1601 of this code apply.

18-1902. OFFICIAL OPPRESSION. — A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, commits a misdemeanor if, knowing that his conduct is illegal, he:

(1) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(2) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

18-1903. SPECULATING OR WAGERING ON OFFICIAL ACTION OR INFORMATION. A public servant commits a misdemeanor if, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, he:

(1) Acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action; or

(2) Speculates or wagers on the basis of such information or official action; or

(3) Aids another to do any of the foregoing.

CHAPTER 20
RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

18-2001. RIOT — FAILURE TO DISPERSE. — (1) Riot. A person is guilty of riot, a felony of the third degree, if he participates with two (2) or more persons in a course of disorderly conduct:
(a) with purpose to commit or facilitate the commission of a felony or misdemeanor;
(b) with purpose to prevent or coerce official action; or
(c) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(2) Failure of disorderly persons to disperse upon official order. Where three (3) or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant, engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

18-2002. DISORDERLY CONDUCT. — (1) Offense defined. A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
(a) engages in fighting or threatening, or in violent or tumultuous behavior; or
(b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or
(c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(2) Grading. An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

18-2003. FALSE PUBLIC ALARMS. — A person is guilty of a misdemeanor if he initiates or circulates a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

18-2004. HARASSMENT. — A person commits a petty misdemeanor if, with purpose to harass another, he:

(1) Makes a telephone call without purpose of legitimate communication; or
(2) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or
(3) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
(4) Subjects another to an offensive touching; or
(5) Engages in any other course of alarming conduct serving no legitimate purpose of the actor.

18-2005. PUBLIC DRUNKENNESS — DRUG INCAPACITATION. — A person is guilty of an offense if he appears in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity. An offense under this section constitutes a petty misdemeanor if the actor has been convicted hereunder twice before within a period of one (1) year. Otherwise the offense constitutes a violation.

18-2006. LOITERING OR PROWLING. — A person commits a violation if he loiters or prowls in a place at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

18-2007. OBSTRUCTING HIGHWAYS AND OTHER PUBLIC PASSAGES. — (1) A person who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage, whether alone or with others, commits a violation, or, in case he persists after warning by a law officer, a petty misdemeanor. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this subsection solely because of a gathering of persons to hear him speak or
otherwise communicate, or solely because of being a member of such a gathering.

(2) A person in a gathering commits a violation if he refuses to obey a reasonable official request or order to move;
   (a) to prevent obstruction of a highway or other public passage; or
   (b) to maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

18-2008. DISRUPTING MEETINGS AND PROCESSIONS. — A person commits a misdemeanor if, with purpose to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, or makes any utterance, gesture or display designed to outrage the sensibilities of the group.

18-2009. DESECRATION OF VENERATED OBJECTS. — A person commits a misdemeanor if he purposely desecrates any public monument or structure, or place of worship or burial, or if he purposely desecrates the national flag or any other object of veneration by the public or a substantial segment thereof in any public place. "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action.

18-2010. ABUSE OF CORPSE. — Except as authorized by law, a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor.

18-2011. CRUELTY TO ANIMALS. — A person commits a misdemeanor if he purposely or recklessly:
   (1) Subjects any animal to cruel mistreatment; or
   (2) Subjects any animal in his custody to cruel neglect; or
   (3) Kills or injures any animal belonging to another without legal privilege or consent of the owner.

Subsections (1) and (2) of this section shall not be deemed applicable to accepted veterinary practices and activities carried on for scientific research.

18-2012. VIOLATION OF PRIVACY. — (1) Unlawful eavesdropping or surveillance. A person commits a misdemeanor if, except as authorized by law, he:
(a) trespasses on property with purpose to subject anyone to eavesdropping or other surveillance in a private place; or
(b) installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in such place, or uses any such unauthorized installation; or
(c) installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there.

“Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

(2) Other breach of privacy of messages. A person commits a misdemeanor if, except as authorized by law, he:

(a) intercepts without the consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; but this paragraph does not extend to (A) overhearing of messages through a regularly installed instrument on a telephone party line or on an extension, or (B) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or incident to other normal operation and use; or
(b) divulges without the consent of the sender or receiver the existence of or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

18-2013. GAMING. — (1) A person commits a misdemeanor if he:

(a) deals, carries on, opens or causes to be opened, or conducts, either as owner, employee or lessee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, indian stick game, or any game played with cards, dice, or any other device for money, checks, credit or any other representative of value;
(b) engages in pool selling or bookmaking for hire, gain or profit;
(c) maintains a place for recording or registering bets or wagers;
(d) receives, registers, records or forwards to any place any money, consideration or thing of value for the purpose of having there bet or wagered;
(e) permits any of the conduct prohibited by subsections (a), (b), (c)
or (d) of this section to be carried on in any place owned, rented or under the control of such person, in whole or in part.

(2) A person commits a violation if he participates in any of the games or conduct prohibited by this section in a capacity other than as owner, employee or lessee.

CHAPTER 21
PUBLIC INDECENCY

18-2101. OPEN LEWDNESS. — A person commits a petty misdemeanor if he does any lewd act which he should reasonably know is likely to be observed by others who would be affronted or alarmed by said act.

18-2102. PROSTITUTION AND RELATED OFFENSES. —
(1) Prostitution. A person is guilty of prostitution, a petty misdemeanor, if he or she:
   (a) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or
   (b) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

   “Sexual activity” includes homosexual and other deviate sexual relations. A “house of prostitution” is any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another. An “inmate” is a person who engages in prostitution in or through the agency of a house of prostitution. “Public place” means any place to which the public or any substantial group thereof has access.

(2) Promoting prostitution. A person who knowingly promotes prostitution of another commits a misdemeanor or felony as provided in subsection (3) of this section. The following acts shall constitute promoting prostitution:
   (a) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business; or
   (b) procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate; or
   (c) encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute; or
   (d) soliciting a person to patronize a prostitute; or
   (e) procuring a prostitute for a patron; or
(f) transporting a person into or within this state with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
(g) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or
(h) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

(3) Grading of offenses under subsection (2). An offense under subsection (2) of this section constitutes a felony of the third degree, if:
   (a) the offense falls within subsection (2) (a), (b), or (c) of this section; or
   (b) the actor compels another to engage in or promote prostitution; or
   (c) the actor promotes prostitution of a child under sixteen (16), whether or not he is aware of the child's age; or
   (d) the actor promotes prostitution of his wife, child, ward, or any person for whose care, protection or support he is responsible.

Otherwise the offense is a misdemeanor.

(4) Presumption from living off prostitutes. A person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is supported in whole or substantial part by the proceeds of prostitution is presumed to be knowingly promoting prostitution in violation of subsection (2) of this section.

(5) Patronizing prostitutes. A person commits a violation if he hires a prostitute to engage in sexual activity with him, or if he enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(6) Evidence. On the issue of whether a place is a house of prostitution, the following shall be admissible evidence: its general repute; the repute of the persons who reside in or frequent the place; the frequency, timing and duration of visits by non-residents. Testimony of a person against his spouse shall be admissible to prove offenses under this section.

18-2.103; LOITERING TO SOLICIT DEVIATE SEXUAL RELATIONS. A person is guilty of a petty misdemeanor if he loiters in or near any public place for the purpose of soliciting or being solicited to engage in deviate sexual relations.
CHAPTER 22
AUTHORIZED DISPOSITION OF OFFENDERS

18-2201. DEGREES OF FELONIES. — (1) Felonies defined by this code are classified, for the purpose of sentence, into three degrees, as follows:

(a) felonies of the first degree;
(b) felonies of the second degree;
(c) felonies of the third degree.

A felony is of the first or second degree when it is so designated by this code. A crime declared to be a felony, without specification of degree, is of the third degree.

(2) Notwithstanding any other provision of law, a felony defined by any statute of this state other than this code shall constitute for the purpose of sentence a felony of the third degree.

18-2202. SENTENCE IN ACCORDANCE WITH CODE AUTHORIZE DISPOSITIONS. — (1) The court shall sentence a person who has been convicted of murder to death or imprisonment, in accordance with section 18-607 of this code.

(2) No person convicted of an offense shall be sentenced otherwise than in accordance with this chapter.

(3) Except as provided in subsection (1) of this section and subject to the applicable provisions of this code, the court may suspend the imposition of sentence on a person who has been convicted of a crime, may order him to be committed in lieu of sentence, in accordance with section 18-2211 of this chapter, or may sentence him as follows:

(a) to pay a fine authorized by section 18-2203 of this chapter; or
(b) to be placed on probation, and, in the case of a person convicted of a felony or misdemeanor, to imprisonment for a term fixed by the court not exceeding thirty (30) days, to be served as a condition of probation; or
(c) to imprisonment for a term authorized by sections 18-2205, 18-2206, 18-2207, 18-2208, 18-2209, or 18-2306 of this code; or
(d) to fine and probation or fine and imprisonment, but not to probation and imprisonment, except as authorized in paragraph (b) of this subsection.

(4) Notwithstanding the provisions of subsection (3) of this section, the court may withhold judgment on a person who has been convicted of an offense and may place the person convicted of an offense on probation on
such terms and for such time as the court may prescribe.

(5) The court may suspend the imposition of sentence on a person who has been convicted of a violation, or may sentence him to pay a fine authorized by section 18-2203 of this chapter.

(6) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

18-2203. FINES. — A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(1) Ten thousand dollars ($10,000) when the conviction is of a felony of the first or second degree;

(2) Five thousand dollars ($5,000) when the conviction is of a felony of the third degree;

(3) One thousand dollars ($1,000) when the conviction is of a misdemeanor;

(4) Five hundred dollars ($500) when the conviction is of a petty misdemeanor or a violation;

(5) Any higher amount equal to double the pecuniary gain derived from the offense by the offender;

(6) Any higher amount specifically authorized by statute.

18-2204. PENALTIES AGAINST CORPORATIONS AND UNINCORPORATED ASSOCIATIONS — FORFEITURE OF CORPORATE CHARTER OR REVOCATION OF CERTIFICATE AUTHORIZING FOREIGN CORPORATION TO DO BUSINESS IN THE STATE. — (1) The court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by section 18-2203 of this chapter.

(2)(a) The prosecuting attorney is authorized to institute civil proceedings in the appropriate court of general jurisdiction to forfeit the charter of a corporation organized under the laws of this state or to revoke the certificate authorizing a foreign corporation to conduct business in this state. The court may order the charter forfeited or the certificate revoked upon finding (A) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, purposely engaged in a persistent course of criminal conduct and (B) that for the prevention of future criminal conduct of the same character, the public interest requires the
charter of the corporation to be forfeited and the corporation to be
dissolved or the certificate to be revoked.
(b) When a corporation is convicted of a crime or a high managerial
agent of a corporation, as defined in section 18-207 of this code, is
convicted of a crime committed in the conduct of the affairs of the
corporation, the court, in sentencing the corporation or the agent, may
direct the prosecuting attorney to institute proceedings authorized by
paragraph (a) of this subsection.
(c) The proceedings authorized by paragraph (a) of this subsection
shall be conducted in accordance with the procedures authorized by
law for the involuntary dissolution of a corporation or the revocation
of the certificate authorizing a foreign corporation to conduct business
in this state. Such proceedings shall be deemed additional to any other
proceedings authorized by law for the purpose of forfeiting the charter
of a corporation or revoking the certificate of a foreign corporation.
18-2205. SENTENCE OF IMPRISONMENT FOR FELONY
ORDINARY TERMS. — A person who has been convicted of a felony may
be sentenced to imprisonment as follows:
(1) In the case of a felony of the first degree, for a term not to exceed
life imprisonment;
(2) In the case of a felony of the second degree, for a term not to
exceed fifteen (15) years;
(3) In the case of a felony of the third degree, for a term not to exceed
seven (7) years.
18-2206. SENTENCE OF IMPRISONMENT FOR FELONY
EXTENDED TERMS. — In the cases designated in section 18-2303 of this
code, a person who has been convicted of a felony may be sentenced to an
extended term of imprisonment, as follows:
(1) In the case of a felony of the first degree, for a term not to exceed
life imprisonment;
(2) In the case of a felony of the second degree, for a term not to
exceed thirty (30) years;
(3) In the case of a felony of the third degree, for a term not to exceed
fifteen (15) years.
18-2207. SENTENCE OF IMPRISONMENT FOR MISDEMEANORS
AND PETTY MISDEMEANORS ORDINARY TERMS. — A person who
has been convicted of a misdemeanor or a petty misdemeanor may be
sentenced to imprisonment for a definite term, which shall be fixed by the
court and shall not exceed one (1) year in the case of a misdemeanor or thirty (30) days in the case of a petty misdemeanor.

18-2208. SENTENCE OF IMPRISONMENT FOR MISDEMEANORS AND PETTY MISDEMEANORS — EXTENDED TERMS. — (1) In the cases designated in section 18-2304 of this code, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to an extended term of imprisonment, as follows:

(a) in the case of a misdemeanor, for a term the maximum of which shall be three (3) years;
(b) in the case of a petty misdemeanor, for a term the maximum of which shall be two (2) years.

18-2209. PLACE OF IMPRISONMENT. — When a person is sentenced to imprisonment for an indefinite term with a maximum in excess of one (1) year, the court shall commit him to the custody of the state board of correction for the term of his sentence or until released in accordance with law.

18-2210. REDUCTION OF CONVICTION BY COURT TO LESSER DEGREE OF FELONY OR TO MISDEMEANOR. — If, when a person has been convicted of a felony, the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the view that it would be unduly harsh to sentence the offender in accordance with this code, the court may enter judgment of conviction for a lesser degree of felony or for a misdemeanor and impose sentence accordingly.

18-2211. CIVIL COMMITMENT IN LIEU OF PROSECUTION OR OF SENTENCE. — (1) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor, is a chronic alcoholic, narcotic addict or person suffering from mental abnormality and the court is authorized by law to order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, the court may order such commitment and dismiss the prosecution. The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(2) The court shall not make an order under subsection (1) of this section unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.
CHAPTER 23
AUTHORITY OF COURT IN SENTENCING

18-2301. CRITERIA FOR WITHHOLDING SENTENCE OF IMPRISONMENT AND FOR PLACING DEFENDANT ON PROBATION.

(1) The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for protection of the public because:

(a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
(b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
(c) a lesser sentence will depreciate the seriousness of the defendant's crime.

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) the defendant's criminal conduct neither caused nor threatened serious harm;
(b) the defendant did not contemplate that his criminal conduct would cause or threaten serious harm;
(c) the defendant acted under a strong provocation;
(d) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
(e) the victim of the defendant's criminal conduct induced or facilitated its commission;
(f) the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;
(g) the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
(h) the defendant's criminal conduct was the result of circumstances unlikely to recur;
(i) the character and attitudes of the defendant indicate that he is unlikely to commit another crime;
(j) the defendant is particularly likely to respond affirmatively to probationary treatment;
(k) the imprisonment of the defendant would entail excessive hardship
to himself or his dependents.

(3) When a person who has been convicted of a crime is not sentenced
to imprisonment, the court shall place him on probation if he is in need of
the supervision, guidance, assistance or direction that the probation service
can provide.

18-2302. CRITERIA FOR IMPOSING FINES. — (1) The court shall
not sentence a defendant only to pay a fine, when any other disposition is
authorized by law, unless having regard to the nature and circumstances of
the crime and to the history and character of the defendant, it is of the
opinion that the fine alone suffices for protection of the public.

(2) The court shall not sentence a defendant to pay a fine in addition
to a sentence of imprisonment or probation unless:

(a) the defendant has derived a pecuniary gain from the crime; or

(b) the court is of the opinion that fine is specially adapted to
deterrence of the crime involved or to the correction of the offender.

(3) The court shall not sentence a defendant to pay a fine unless:

(a) the defendant is or will be able to pay the fine; and

(b) the fine will not prevent the defendant from making restitution or
reparation to the victim of the crime.

(4) In determining the amount and method of payment of a fine, the
court shall take into account the financial resources of the defendant and the
nature of the burden that its payment will impose.

18-2303. CRITERIA FOR SENTENCE OF EXTENDED TERM OF
IMPRISONMENT — FELONIES. — The court may sentence a person who
has been convicted of a felony to an extended term of imprisonment if it
finds one or more of the grounds specified in this section. The finding of the
court shall be incorporated in the record.

(1) The defendant is a persistent offender whose commitment for an
extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant is over
twenty-one (21) years of age and has previously been convicted of two (2)
felonies or of one (1) felony and two (2) misdemeanors, committed at
different times when he was over eighteen (18) years of age.

(2) The defendant is a professional criminal whose commitment for an
extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant is over
twenty-one (21) years of age and:
(a) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or

(b) the defendant has substantial income or resources not explained to be derived from a source other than criminal activity.

(3) The defendant is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusions that his mental condition is gravely abnormal; that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and that such condition makes him a serious danger to others.

(4) The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The court shall not make such a finding unless:

(a) the defendant is being sentenced for two (2) or more felonies, or is already under sentence of imprisonment for felony, and the sentences of imprisonment involved will run concurrently under section 18-2306 of this chapter; or

(b) the defendant admits in open court the commission of one (1) or more other felonies and asks that they be taken into account when he is sentenced; and

(c) the longest sentences of imprisonment authorized for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively would exceed in length the maximum of the extended term imposed.

18-2304. CRITERIA FOR SENTENCE OF EXTENDED TERM OF IMPRISONMENT — MISDEMEANORS AND PETTY MISDEMEANORS. The court may sentence a person who has been convicted of a misdemeanor or petty misdemeanor to an extended term of imprisonment if it finds one (1) or more of the grounds specified in this section. The finding of the court shall be incorporated in the record.

(1) The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant has previously been convicted of two (2) crimes, committed at different times
when he was over eighteen (18) years of age.

(2) The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless:
(a) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or
(b) the defendant has substantial income or resources not explained to be derived from a source other than criminal activity.

(3) The defendant is a chronic alcoholic, narcotic addict, or person of abnormal mental condition who requires rehabilitative treatment for a substantial period of time.

(4) The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The court shall not make such a finding unless:
(a) the defendant being sentenced for a number of misdemeanors or petty misdemeanors or is already under sentence of imprisonment for crime of such grades, or admits in open court the commission of one (1) or more such crimes and asks that they be taken into account when he is sentenced; and
(b) maximum fixed sentences of imprisonment for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum period of the extended term imposed.

18-2305. FORMER CONVICTION IN ANOTHER JURISDICTION — DEFINITION AND PROOF OF CONVICTION — SENTENCE TAKING INTO ACCOUNT ADMITTED CRIMES BARS SUBSEQUENT CONVICTION FOR SUCH CRIMES. — (1) For purposes of subsection (1) of section 18-2303 or 18-2304 of this chapter, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one (1) year was authorized under the law of such other jurisdiction, of a misdemeanor if sentence of imprisonment in excess of thirty (30) days but not in excess of a year was authorized and of a petty misdemeanor if sentence of imprisonment for not more than thirty (30) days was authorized.

(2) An adjudication by a court of competent jurisdiction that the
defendant committed a crime constitutes a conviction for purposes of section 18-2303 through 18-2305 of this chapter, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

(3) Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction or imprisonment, that reasonably satisfies the court that the defendant was convicted.

(4) When the defendant has asked that other crimes admitted in open court be taken into account when he is sentenced and the court has not rejected such request, the sentence shall bar the prosecution or conviction of the defendant in this state for any such admitted crime.

18-2306. MULTIPLE SENTENCES — CONCURRENT AND CONSECUTIVE TERMS. — (1) Sentences of imprisonment for more than one (1) crime. When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous suspended sentence or sentence of probation has been revoked, such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence, except that:

(a) a definite and an indefinite term shall run concurrently and both sentences shall be satisfied by service of the indefinite term; and
(b) the aggregate of consecutive definite terms shall not exceed one (1) year; and
(c) the aggregate of consecutive indefinite terms shall not exceed in maximum length the longest extended term authorized for the highest grade and degree of crime for which any of the sentences was imposed; and
(d) not more than one (1) sentence for an extended term shall be imposed.

(2) Sentences of imprisonment imposed at different times. When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for a crime committed prior to the former sentence, other than a crime committed while in custody:

(a) the multiple sentences imposed shall so far as possible conform to subsection (1) of this section; and
(b) whether the court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in
imprisonment on the prior sentence in determining the permissible aggregate length of the term or terms remaining to be served; and (c) when a new sentence is imposed on a prisoner who is on parole, the balance of the parole term on the former sentence shall be deemed to run during the period of the new imprisonment.

(3) Sentence of imprisonment for crime committed while on parole. When a defendant is sentenced to imprisonment for a crime committed while on parole in this state, such term of imprisonment and any period of reimprisonment that the board of parole may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.

(4) Calculation of concurrent and consecutive terms of imprisonment. (a) when indefinite terms run concurrently the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term. (b) when indefinite terms run consecutively the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms. (c) when a definite and an indefinite term run consecutively, the period of the definite term is added to the maximum of the indefinite term and both sentences are satisfied by serving the indefinite term.

(5) Multiple sentences of imprisonment in other cases. Except as otherwise provided in this section, multiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

(6) Suspension of sentence or probation and imprisonment; multiple terms of suspension and probation. When a defendant is sentenced for more than one (1) offense or a defendant already under sentence is sentenced for another offense committed prior to the former sentence:

(a) the court shall not sentence to probation a defendant who is under sentence of imprisonment with more than thirty (30) days to run or impose a sentence of probation and a sentence of imprisonment, except as authorized by section 18-2202(3)(b) of this code; and (b) multiple periods of suspension or probation shall run concurrently from the date of the first such disposition; and (c) when a sentence of imprisonment is imposed for an indefinite term, the service of such sentence shall satisfy a suspended sentence on another count or a prior suspended sentence or sentence to probation; and
(d) when a sentence of imprisonment is imposed for a definite term, the period of a suspended sentence on another count or a prior suspended sentence or sentence to probation shall run during the period of such imprisonment.

(7) Offense committed while under suspension of sentence or probation. When a defendant is convicted of an offense committed while under suspension of sentence or on probation, and such suspension or probation is not revoked:

(a) if the defendant is sentenced to imprisonment for an indefinite term, the service of such sentence shall satisfy the prior suspended sentence or sentence of probation; and

(b) if the defendant is sentenced to imprisonment for a definite term, the period of the suspension or probation shall not run during the period of such imprisonment; and

(c) if sentence is suspended or the defendant is sentenced to probation, the period of such suspension or probation shall run concurrently with or consecutively to the remainder of the prior periods, as the court determines at the time of sentence.

18-2307. PROCEDURE ON SENTENCE − PRE-SENTENCE INVESTIGATION AND REPORT − REMAND FOR PSYCHIATRIC EXAMINATION − TRANSMISSION OF RECORDS TO DEPARTMENT OF CORRECTION. − (1) The court shall not impose sentence without first ordering a pre-sentence investigation of the defendant and according due consideration to a written report of such investigation where:

(a) the defendant has been convicted of a felony; or

(b) the defendant is less than twenty-two (22) years of age and has been convicted of a crime; or

(c) the defendant will be placed on probation or sentenced to imprisonment for an extended term.

(2) The court may order a pre-sentence investigation in any other case.

(3) The pre-sentence investigation shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation and personal habits and any other matters that the probation officer deems relevant or the court directs to be included.

(4) Before imposing sentence, the court may order the defendant to submit to psychiatric observation and examination for a period of not
exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(5) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and the conclusions of any pre-sentence investigation or psychiatric examination and afford them fair opportunity, if the defendant so requests, to controvert them. The sources of confidential information need not, however, be disclosed.

(6) The court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. Subject to the limitation of subsection (5) of this section, the defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

(7) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence investigation or psychiatric examination shall be transmitted forthwith to the state board of correction, or, when the defendant is committed to the custody of a specific institution, to such institution.

SECTION 2. Any laws of Idaho, other than this code, remaining in force after the effective date of this code, which refer to certain provisions of law repealed under this act, shall be deemed to refer to those provisions of this code which are in substance the same or substantially the same as such repealed provisions.

SECTION 3. This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to time this act takes effect, but the same may be enjoyed, asserted and enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, part or provision of this act shall be found to be invalid or ineffective by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, subsection, subdivision, paragraph, sentence, part or provision, and this act as a whole shall not be declared invalid by reason of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, parts or provisions may be so found invalid.

SECTION 6. This act shall be in full force and effect on and after 12:01 a.m., January 1, 1972.

Approved March 18, 1971.

CHAPTER 144
(H.B.' No.199)

AN ACT
AMENDING SECTION 63-707, IDAHO CODE, BY STRIKING THE WORDS "EXCEPT WATER" AND ADDING "INCLUDING WATER COMPANIES UNDER THE JURISDICTION OF THE IDAHO PUBLIC UTILITIES COMMISSION", STRIKING THE WORDS "TOWN AND VILLAGE" TO CONFORM WITH MUNICIPAL CODE, PROVIDING THAT PROPERTY NOT SUSCEPTIBLE OF APPORTIONMENT ON THE BASIS OF RAIL, WIRE OR PIPELINE MILEAGE MAY BE APPORTIONED TO COUNTY AND OTHER TAXING DISTRICTS IN WHICH THE PROPERTY IS SITUATE ACCORDING TO METHOD ADOPTED BY TAX COMMISSION.

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

SECTION 1. That Section 63-707, Idaho Code, be, and the same is hereby amended to read as follows:

63-707. MANNER OF ASSESSMENT — VALUATION. — The state tax commission must assess all property which, under the provisions of this act, is to be assessed by it, at the meeting of the said commission convening on the second Monday of August in each year, and must complete the assessment of such property on the fourth Monday of August in that year.
The said board shall at such meeting ascertain and determine the assessed value of all such property in the state, except electric current transmission and distribution lines, and shall determine the total value, the number of miles and value per mile of each railroad, telegraph and telephone line, and pipeline for transportation of commodities, including water companies under the jurisdiction of the Idaho public utilities commission, except water, in the state, the value, number of miles, and value per mile of such line in any county into or through which the said line extends, and the value, number of miles and value per mile, of such line in any incorporated city, town, village, school district or other taxing district into or through which the said line extends. The value per mile of any line except electric current transmission and distribution lines, is to be determined by dividing the total value of such line within the state by the number of miles of such line within the state.

The said commission shall at such meeting ascertain and determine the assessed value of the electric current transmission and distribution lines in each county separately, and shall determine the total value, the number of miles and value per mile of each electric current transmission and distribution line in each county into or through which said line extends, and the value, number of miles and value per mile of such line in any incorporated city, town, village, school district or other taxing district into or through which the said line extends. The value per mile of electric current transmission and distribution lines is to be determined by dividing the total value of such line within each county by the number of miles of such line within said county, and all operating property of such electric current transmission and distribution lines shall be assessed as of and apportioned to the county in which the same is situated as a part of the transmission line in said county.

If the property of any company assessable under this section is of such a nature that it cannot reasonably be apportioned on the basis of rail, wire, pipeline mileage, such as microwave and radio relay stations, the tax commission may adopt such other method or basis of apportionment to the county and taxing districts in which the property is situate as may be feasible and proper.

All property assessed as herein provided shall be valued as of the same time as other property in the state is valued, and the value of all franchises held by any person whose property has been assessed as herein provided shall be included in the value of such property.

Approved March 18, 1971.
CHAPTER 145
(H. B. No. 110)

AN ACT

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

SECTION 1. There is hereby created within each of the counties of Elmore, Camas, Blaine, Minidoka, Jerome, Lincoln, and Gooding, a special advisory board on state land usage.

SECTION 2. It shall be the purpose of each board to assist the state board of land commissioners, through the land commissioner of the department of public lands:

1. in long range planning for the highest use of state lands to insure their maximum contribution to the endowment funds to which they are dedicated within the context of sound resource management and with due consideration for the public’s interest; and

2. in the classification of state lands within the county; and

3. in specific policy suggestions as to the usage of state lands within the county.

SECTION 3. Each special advisory board shall consist of five (5) members, appointed as follows:

One (1) member appointed by the commissioner of the department of public lands. Such appointment may be an employee of the department of public lands.

One (1) local educator, who resides within the county, which appointment shall be made by the state board of land commissioners.
One (1) member, who, because his residency and knowledge of the resources within the county qualifies him for appointment by the state board of land commissioners.

One (1) member, who, because his residency, his knowledge of the resources within the county and his work with programs such as the county planning board, zoning board, soil conservation district board, or similar qualifying experience, qualifies him for appointment by the county commissioners of the county where the state land is situated. The appointee shall serve as liaison between the special advisory board and the county planning and zoning boards, and soil conservation district boards, should they exist within the county.

One (1) member chosen as a direct representative of the county commissioners. Nothing shall exclude the county commissioners from appointing a representative from their own membership.

Members of the advisory board, who are not state or county officers or employees, shall be paid twenty-five dollars ($25) a day as the total remuneration for their services and expenses, but such payments shall not exceed two hundred fifty dollars ($250) in any one (1) year. The payment shall be made upon certification of the committee member who is elected chairman of the advisory board. Funds for the payment of the per diem allowance shall be provided by the appointing authority.

Each board member shall serve at the pleasure of the appointing authority. The appointing authority shall fill any vacancy on the board within thirty (30) days of its occurrence. A majority of the advisory board members shall constitute a quorum for all business.

SECTION 4. The advisory board of each county shall have the power to elect its own chairman and to provide for the maintenance of its own records and proceedings, and it shall be the duty of the advisory board to specifically fulfill the following functions:

1. inventory, examine, and record the present use of all state lands within the county; and

2. make recommendations to the state board of land commissioners as to the highest and best use of each parcel of state land situated within the county; and

3. recommend a general management policy concerning state lands, within the following limits:

   a. the retention and management of state lands in their present location; or
b. the sale of state lands in their present location; or

c. an exchange followed by the sale of the specific lands acquired from
the exchange; or

d. an exchange to obtain land desired for retention and management,
as needed for the public use.

SECTION 5. The advisory board shall, upon completion of their
preliminary report, hold at the county seat a public hearing where such
report shall be read and presented to those attending. To insure that
representative opinions are heard, the chairman of the advisory board shall
place notice of the time, place and subject of the hearings, in newspapers of
the county in which the land is located. The notice shall be published once
each week on the same day of each week for three (3) weeks preceding the
hearing. The cost of publication of the notices shall be borne by the
department of public lands.

The advisory board shall limit testimony to the pertinent topics defined
in section 4 of this act. It will hear all testimony from interested parties,
including governmental agencies, private citizens and organizations.

Within thirty (30) days after the public hearing the advisory board shall
finalize its report and request an appointment for an appearance before the
state board of land commissioners. The advisory board shall present its final
report to the state board of land commissioners. After receiving the report of
any county advisory board the state board of land commissioners shall
within thirty (30) days comply with one of the following: accept and
approve the report; or, ask for additional information and a subsequent
report; or, reject the report. In the event of the rejection of any report, the
advisory board in the county concerned shall be dissolved and within sixty
(60) days a new county advisory board shall be established and it shall
proceed under the powers of this act as though it were the original advisory
board.

SECTION 6. Upon acceptance of the final report the state board of
land commissioners shall begin the prompt implementation of the submitted
plan. Throughout the implementation the county board shall serve in an
advisory capacity to assist as requested by the state department of public
lands in the implementation procedures.

During the period of implementation the advisory board from each
county shall meet with the commissioner of the department of public lands,
or his agent, upon his request, but not less than once annually, for the
purpose of reviewing progress in the implementation of the submitted plan.
SECTION 7. Upon completion of the accepted plan, the commissioner of the department of public lands shall notify each member of the special advisory board that the plan has been implemented, and the special advisory board dissolved. Upon notification from the commissioner, those powers granted the advisory board shall cease, and the board shall be dissolved.

SECTION 8. This act shall be in full force and effect on and after July 1, 1971. It shall be the duty of the commissioner of the department of public lands on or before May 15, 1971, to notify, in writing, each group of county commissioners listed in this act to acquaint them with the provisions of this act, and to cooperate with the organization of the special advisory board herein established. Each special advisory board appointed shall meet for the first time no later than August 15, 1971, on a date fixed by the commissioner of the department of public lands.

Approved March 18, 1971.

CHAPTER 146
(H. B. No. 254)

AN ACT
APPROPRIATING MONEYS OUT OF THE STATE LIQUOR FUND TO THE STATE LIQUOR DISPENSARY FOR THE PERIOD FROM JULY 1, 1971, THROUGH JUNE 30, 1972, AND PRESCRIBING EXPENDITURE CLASSIFICATIONS FOR THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated out of the State Liquor Fund the sum of $2,205,546 to the State Liquor Dispensary for the period from July 1, 1971 through June 30, 1972, to be expended as follows:

FOR:

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<th>Category</th>
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<td>Salaries and Wages</td>
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<tr>
<td><strong>Total</strong></td>
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</tr>
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Approved March 18, 1971.
AN ACT

APPROPRIATING ADDITIONAL MONEYS OUT OF THE GENERAL FUND TO THE DEPARTMENT OF PUBLIC ASSISTANCE FOR THE PURPOSES SPECIFIED FOR THE FISCAL PERIOD ENDING JUNE 30, 1971; AND DECLARING AN EMERGENCY.

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

SECTION 1. (1) In addition to the appropriation made by Chapter 397, Laws of 1969, and by Chapter 163, Laws of 1970, there is hereby appropriated out of the general fund the sum of $667,193 to the department of public assistance for the fiscal period ending June 30, 1971.

(2) In addition to the appropriation made by subsection (1) of this section, an additional sum of $65,322 is hereby appropriated out of the general fund to the department of public assistance for the fiscal period ending June 30, 1971, subject to the following conditions, and which may be expended only after each such condition has been met:

(a) The commissioner of public assistance certifies in writing to the state board of examiners that certain legal proceedings now pending between the department of public assistance and the United States department of health, education and welfare as the result of exceptions taken to past expenditures of federal funds has in fact, resulted in a current allotment reduction by the United States department of health, education and welfare in the amount of at least $65,322; and

(b) The attorney general of the state of Idaho certifies in writing that such withholding of funds did in fact occur from the legal proceedings now pending between the department of public assistance and the United States department of health, education and welfare.

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 March 18, 1971.
AN ACT
AMENDING SECTION 34-507, IDAHO CODE, RELATING TO
SELECTION OF DELEGATES TO STATE CONVENTIONS OF
POLITICAL PARTIES, BY PROVIDING THAT THE QUALIFIED
ELECTORS, AS DEFINED, AT EACH INSTITUTION OF HIGHER
EDUCATION SHALL BE ENTITLED TO SELECT ONE DELEGATE
PLUS ONE ADDITIONAL DELEGATE FOR EVERY TWO
THOUSAND FULL TIME RESIDENT STUDENTS, PROVIDING
QUALIFICATIONS FOR DELEGATES, METHOD OF SELECTION,
AND QUALIFICATIONS FOR ELECTORS, PROVIDING THE
INSTITUTIONS WHICH SHALL BE ENTITLED TO DELEGATES,
AND PROVIDING THE DESIGNATION OF THE UNIVERSITIES
AND COLLEGES BLOC AND THAT THE BLOC SHALL VOTE ON
THE ROLL CALL.

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

SECTION 1. That Section 34-507, Idaho Code, be, and the same is
hereby amended to read as follows:

34-507. SELECTION OF DELEGATES TO STATE CONVENTION. —
The delegates to the state convention of each political party shall be selected
as follows:

(1) Each county delegation shall consist of the county chairman, the
state committeeman, the state committeewoman and two (2) members
selected by the county central committee.

(2) Each legislative district delegation shall consist of the legislative
district chairman, the incumbent state legislators, one (1) delegate for each
two thousand (2000) votes, or major fraction thereof, cast for the office of
United States representative of that political party at the last primary
election within that legislative district. The delegates shall be selected by the
members of the legislative district central committee.

All central committees shall select alternate delegates equal to the
number of official delegates to which they are entitled.

(3) The qualified electors, as defined in this subsection, of each
institution of higher education enumerated herein, shall select at least one
(1) delegate plus one (1) additional delegate for each additional two
thousand (2000) full time resident students, or major fraction thereof, who shall enjoy all the rights and privileges of delegates as set forth in sections 34-707 and 34-708, Idaho Code. The number of full time students shall be determined as of the fall enrollment preceding the convention. Delegates from institutions of higher education shall meet the following qualifications:

(a) belong to a campus political organization that either affiliates or identifies with the political party, as defined in section 34-501, Idaho Code;

(b) be a full time student during the regular school year;

(c) be at least eighteen (18) years of age;

(d) have been a resident of the state of Idaho for six (6) months and be registered to vote in presidential elections; and

(e) be selected by secret ballot by electors meeting the requirements of (a), (b), (c) and (d) set forth above.

The institutions shall be: Boise State College, College of Idaho, College of Southern Idaho, Idaho State University, Lewis and Clark Normal School, North Idaho Junior College, Northwest Nazarene College, Ricks College, and University of Idaho or any new institutional name or title for any of said institutions as hereafter may be designated by the state board of education or the legislature of the state of Idaho.

Delegates selected under the provisions of paragraph (3) shall sit in a bloc which shall be designated “universities and colleges”, and shall appear on all roll call votes as provided by party rules.

For the purposes of this subsection, “full time resident student” shall mean a full time resident student as defined by the respective institutions.

Approved March 19, 1971.

CHAPTER 149
(H. B. No. 107 As Amended)

AN ACT
AMENDING SECTION 42-230, IDAHO CODE, BY PROVIDING A DEFINITION OF “DOMESTIC PURPOSES” FOR THE USE OF WATER; AMENDING SECTION 42-238, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE; AND DECLARING AN EMERGENCY.
Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-230, Idaho Code, be, and the same is hereby amended to read as follows:

42-230. DEFINITIONS. — (a) "Ground water" is all water under the surface of the ground whatever may be the geological structure in which it is standing or moving.

(b) "Well" is an artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water is sought or obtained.

(c) "Well driller" is any person or group of persons who excavate or open a well or wells for compensation or otherwise upon the land of the well driller or upon other land.

(d) "Domestic purposes" is water for a single family household use and or a sufficient amount for the use of domestic animals kept with and for the use of the household livestock, and water used for all other purposes including irrigation of up to one-half (½) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day not to exceed one-half (½) acre of irrigated land. For the purposes of the exception in section 42-227, Idaho Code, "domestic purposes" shall not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments.

(e) "Water right" is the legal right, however acquired, to the use of water for beneficial purposes.

SECTION 2. That Section 42-238, Idaho Code, be, and the same is hereby amended to read as follows:

42-238. WELL DRILLERS. — (1) Powers and Duties of the State Reclamation Engineer. The state reclamation engineer is hereby vested with the powers and duties relating to the qualifications and licensing of well drillers as provided for in this act so as to protect the ground water resources against waste and contamination. The state reclamation engineer is also authorized to adopt and enforce a code of standards of well construction necessary to protect the ground water resources as set forth in this act. The state reclamation engineer is also charged with the responsibility of collecting and filing for public use the well drillers' reports that are required in this act.

(2) Licensing of Well Drillers. It shall be unlawful for any person after July 1, 1967 to drill a well in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, without first obtaining a driller's license as
provided herein. For the purpose of this act, a "person" shall be defined as any individual who drills or contracts to drill a water well for hire or otherwise a water well for himself or another in this state; it shall also be defined as any firm, copartnership, corporation or association which drills or contracts to drill a water well for hire or otherwise in this state except that employees of said firm, copartnership, corporation or association authorized to operate drilling equipment as the contractor's agent, shall not be required to obtain an individual well drilling license provided that the names and addresses of such employees are recorded with the state reclamation engineer. The license shall be obtained by filing with the state reclamation engineer an application in writing on a form provided by the state reclamation engineer accompanied by a $25.00 twenty-five dollar ($25) licensing fee. To determine the applicant's qualifications, the state reclamation engineer may require detailed information on the driller's past experience, and/or references, and/or an oral examination, and/or a written examination. The state reclamation engineer shall adopt rules and regulations for the licensing of well drillers in compliance with chapter 52, title 67, Idaho Code, and shall consider such factors as the applicant's (1) knowledge of Idaho water laws and the rules and regulations of the department of reclamation in connection with the drilling of wells, (2) knowledge of proper well construction procedures and the water well construction standards adopted by the state reclamation engineer as provided in this act, (3) knowledge of the various types of drilling tools and their use, (4) general knowledge of underground geology and ground water hydrology and their relation to well construction, (5) ownership or access to equipment capable of adequately constructing a well, (6) knowledge of types of well casing and their use, (7) knowledge of special well drilling problems and their solution, and (8) previous drilling experience. A copy of the proposed rules and regulations for licensing of well drillers shall be furnished to each well driller holding a current license at the time such proposed rules and regulations are promulgated.

If it is determined that the applicant is not qualified, the state reclamation engineer shall deny the application and refund the licensing fee. If it is determined that the applicant is qualified, a license shall be issued upon the filing with the state reclamation engineer of a surety bond or cash bond in the penal sum of one thousand dollars ($1,000), conditioned upon the proper compliance with the provisions of this act and the rules and regulations promulgated pursuant thereto. Such bond shall be made payable to the state reclamation engineer. A license issued under this section shall
expire on June 30 of each year or upon revocation of the license by the state reclamation engineer as provided for in this act. The license can be renewed effective July 1 of each year upon written application on forms provided by the state reclamation engineer and the filing of a $10.00 ten dollar ($10) renewal fee. The renewal request must be accompanied by a new bond or evidence that the previous bond is still in effect. The renewal may then be granted by the state reclamation engineer if he determines that the driller has complied with the rules and regulations promulgated pursuant to this act.

The fees collected for the licensing of well drillers shall be deposited in a special fund with the state treasurer with other fees collected by the department of reclamation.

The licensed driller shall have a card on hand, provided by the state reclamation engineer, to indicate his present license at all times when he is operating the drilling equipment. The state reclamation engineer may also require other identification to be posted on the drilling equipment as he deems helpful in the administration of this act.

(3) Well Driller’s Report. In order to enable a comprehensive survey of the extent and occurrence of the state’s ground water resource, every well driller is hereby required to keep a well log and pertinent data concerning each well, and its construction, that is drilled by him in Idaho, including wells excepted under sections 42-227 and 42-228 of this title, and complete a report on forms furnished by the state reclamation engineer. These reports shall be properly prepared and signed by the driller and deposited with the state reclamation engineer within thirty (30) days following the completion of the well. Said report shall become a permanent record in the office of the department of reclamation for hydrologic and geologic analysis and research, and shall be available for public use. The report shall include such data as the state reclamation engineer deems necessary to provide the information that will be valuable for future reference and study.

(4) Well Construction Standards. The state reclamation engineer shall adopt minimum standards for water well construction in this state under the provisions of chapter 52, title 67, Idaho Code. Such standards shall require each well to be so constructed as to protect the ground water of the state from waste and contamination. Every licensed well driller will be furnished a copy of the adopted standards by the state reclamation engineer, and will be required to construct each well drilled after July 1, 1967 in compliance with the determined standards.

(5) Penalties for Violation. Failure of the driller to comply with the provisions of section 42-238(3), Idaho Code, will allow the state reclamation
engineer to proceed to collect the necessary data on the well or wells in any manner available to him, and the cost of this data collection may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

Failure of the driller to comply with the provisions of section 42-238(3), Idaho Code, is also cause for the state reclamation engineer to revoke an active license, or refuse to renew a license, until such time as the well driller's report or reports are properly completed and on file in the office of the state reclamation engineer.

Failure of the driller to comply with the provisions of section 42-238(4), Idaho Code, will allow the reclamation engineer to proceed to repair or reconstruct or plug a well so that it complies with the adopted minimum standards of well construction, and the costs of this work may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

Failure of the driller to comply with the provisions of section 42-238(4), Idaho Code, is also cause for the state reclamation engineer to revoke an active license or refuse to renew a license until such time as the well driller has repaired or reconstructed the well or wells so that they meet the adopted minimum standards. The reclamation engineer may also require that the well driller present evidence to show that he and his equipment are now capable of constructing a well in a proper manner, before the license is renewed.

Revocation or refusal to renew a well driller's license shall be determined by the state reclamation engineer only after fifteen (15) days' notice, setting forth reasons therefor, has been sent by certified mail to the well driller at his address of record with the department of reclamation. Any person violating any provision of this act shall be guilty of a misdemeanor as provided under section 42-237g, Idaho Code.

(6) Appeals. Any person dissatisfied with any decision, determination, order or action of the state reclamation engineer made pursuant to this act, may take an appeal therefrom under the provisions of section 42-237e, Idaho Code.

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 March 20, 1971.
CHAPTER 150
(H. B. No. 242)

AN ACT
WAIVING THE DEFENSE OF SOVEREIGN IMMUNITY OF THE STATE AND ITS POLITICAL SUBDIVISIONS; PROVIDING THAT THIS ACT SHALL BE KNOWN AND CITED AS THE "IDAHO TORT CLAIMS ACT"; PROVIDING DEFINITIONS; PROVIDING LIABILITY OF THE STATE AND ITS POLITICAL SUBDIVISIONS FOR THEIR TORTIOUS CONDUCT AND PROVIDING FOR EXCEPTIONS; PROVIDING EXCEPTIONS TO TORT LIABILITY; PROVIDING FOR FILING CLAIMS AGAINST THE STATE WITHIN A SPECIFIED TIME; PROVIDING FOR FILING OF CLAIMS AGAINST A POLITICAL SUBDIVISION WITHIN A SPECIFIED TIME; PROVIDING THE INFORMATION THAT MUST BE INCLUDED IN THE CLAIM FILED AGAINST THE STATE OR POLITICAL SUBDIVISION; PROVIDING THAT NO CLAIM OR ACTION ALLOWED UNLESS PROCEDURES SET FORTH IN THE ACT FOLLOWED; PROVIDING THAT A CLAIM IS DEEMED DENIED AFTER SPECIFIED TIME AFTER FILING; PROVIDING FOR AN ACTION IN DISTRICT COURT ON DENIAL OF CLAIM; PROVIDING FOR A STATUTE OF LIMITATIONS; PROVIDING FOR COMPROMISE AND SETTLEMENT OF CLAIM BY A POLITICAL SUBDIVISION; PROVIDING FOR COMPROMISE AND SETTLEMENT OF CLAIM BY THE STATE; PROVIDING THE DISTRICT COURT SHALL HAVE JURISDICTION OVER ANY ACTION BROUGHT UNDER THIS ACT AND PROVIDING FOR RULES OF PROCEDURE TO GOVERN; PROVIDING WHERE ACTIONS AGAINST THE STATE OR POLITICAL SUBDIVISION MAY BE BROUGHT; PROVIDING THAT IN ALL ACTIONS AGAINST THE STATE THE STATE SHALL BE NAMED AS THE DEFENDANT AND THAT THE SUMMONS SHALL BE SERVED ON THE SECRETARY OF STATE; PROVIDING THAT RECOVERY AGAINST A GOVERNMENTAL ENTITY SHALL BAR ANY ACTION AGAINST A GOVERNMENTAL EMPLOYEE; PROVIDING THAT NO PUNITIVE DAMAGES MAY BE ALLOWED UNDER THIS ACT; PROVIDING FOR ACQUISITION AND ADMINISTRATION OF INSURANCE BY THE STATE; PROVIDING THAT ONLY THE
DEPARTMENT OF INSURANCE MAY PROCURE INSURANCE FOR THE STATE; PROVIDING FOR THE APPORTIONMENT OF THE COSTS OF INSURANCE PURCHASED BY THE STATE; PROVIDING FOR PAYMENT OF CLAIM AGAINST THE STATE WHERE NOT COVERED BY INSURANCE; PROVIDING MINIMUM REQUIREMENTS FOR INSURANCE POLICIES PURCHASED FOR PROPERTY LOSS OR PERSONAL INJURY OR DEATH; PROVIDING THAT ANY INSURANCE PURCHASED NOT MEETING THE MINIMUM REQUIREMENTS SHALL NOT BE RENDERED INVALID BUT BE CONSTRUED AND APPLIED AS IF IN FULL COMPLIANCE WITH THIS ACT, AND PROVIDING THAT THE PROVISIONS OF THIS ACT SHALL NOT BE CONSTRUED TO PROHIBIT STANDARD AND CUSTOMARY EXCLUSIONS AS THE INSURANCE COMMISSIONER DEEMS REASONABLE AND PRUDENT; PROVIDING FOR REDUCTION OF CLAIM IN EXCESS OF MINIMUM REQUIREMENT OF POLICY TO THE MAXIMUM COVERAGE OF THE POLICY OR THE MINIMUM REQUIREMENT, WHICHEVER IS GREATER; PROVIDING FOR METHOD OF PAYMENT OF INSURANCE PREMIUM BY POLITICAL SUBDIVISIONS; PROVIDING FOR A METHOD OF PAYMENT OF A CLAIM AGAINST A POLITICAL SUBDIVISION IF NOT COVERED BY INSURANCE; REPEALING SECTIONS 41-3504, 41-3505 AND 41-3506, IDAHO CODE; PROVIDING SEVERABILITY; AND DECLARING SECTIONS 19, 20 AND 21 AN EMERGENCY.

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

SECTION 1. This act shall be known and may be cited as the "Idaho tort claims act."

SECTION 2. As used in this act:

1. "State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

2. "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

3. "Governmental entity" means and includes the state and political subdivisions as herein defined.

4. "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons
acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

5. "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence.

6. "Property damage" means injury or destruction to tangible property caused by an occurrence.

7. "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of bodily injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state of Idaho.

SECTION 3. Except as otherwise provided in this act, every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

SECTION 4. A governmental entity shall not be liable for any claim which:

1. Arises out of any act or omission of an employee of the governmental entity exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused.

2. Arises out of the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Arises out of the imposition or establishment of a quarantine by a governmental entity, whether such quarantine relates to persons or property.

4. Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Arises out of the activities of the Idaho National Guard when acting under a call of the governor, or when engaged in combatant activities, or during a time of war.
6. Arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances.

7. Arises out of a plan or design for construction or improvement to the highways, roads, streets, bridges, or other public property where such plan or design is prepared in conformity with standards in effect at the time of construction, previously approved in advance of the construction or approved by the legislative body of the governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval.

SECTION 5. All claims against the state arising under the provisions of this act shall be presented to and filed with the secretary of state within one hundred twenty (120) days from the date the claim arose or reasonably should have been discovered, whichever is later.

SECTION 6. All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred twenty (120) days from the date the claim arose or reasonably should have been discovered, whichever is later.

SECTION 7. All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time the claim arose. If the claimant is incapacitated from presenting and filing his claim within the time prescribed or if the claimant is a minor or if the claimant is a nonresident of the state and is absent during the time within which his claim is required to be filed, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

SECTION 8. No claim or action shall be allowed against a governmental entity unless the claim has been presented and filed within the time limits prescribed by this act.
SECTION 9. Within sixty (60) days after the filing of the claim the governmental entity shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the sixty (60) day period the governmental entity has failed to approve or deny the claim.

SECTION 10. If the claim is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where an action is permitted by this act.

SECTION 11. Every claim against a governmental entity permitted under the provisions of this act shall be forever barred, unless an action is begun within two (2) years after the claim is filed with the governmental entity.

SECTION 12. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any.

SECTION 13. The board of examiners may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any.

SECTION 14. The district court shall have jurisdiction over any action brought under this act and such actions shall be governed by the Idaho rules of civil procedure insofar as they are consistent with this act.

SECTION 15. Actions against the state shall be brought in the county in which the cause of action arose or in Ada County. In addition, a resident of the state of Idaho may bring an action in the county of his residence.

Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

SECTION 16. In all actions against the state, the state shall be named the defendant, and the summons shall be served on the secretary of state.

SECTION 17. Recovery against a governmental entity under the provisions of this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act or omission gave rise to the claim.

SECTION 18. Governmental entities shall not be liable for punitive damages on any claim allowed under the provisions of this act.

SECTION 19. The department of insurance shall be responsible for the acquisition and administration of all liability insurance of the state.

The department of insurance shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state,
provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts not less than the minimum specified in section 24 of this act and shall have the authority to purchase, renew, cancel and modify all policies according to the comprehensive insurance plan.

SECTION 20. No state agency or institution other than the state department of insurance may procure liability insurance under this act. All state agencies and institutions shall comply with this act and the insurance plan developed by the department of insurance.

SECTION 21. The department of insurance shall apportion the costs of all insurance purchased under this act to the individual agencies and institutions and the costs shall be paid to the department.

SECTION 22. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of this act, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

SECTION 23. All political subdivisions of the state shall have the authority to purchase the necessary liability insurance.

SECTION 24. Every policy or contract of insurance purchased by a political subdivision or the state department of insurance for the state or a political subdivision as permitted under the provisions of this act shall provide:

1. In respect to personal injury or death, exclusive of interest and costs, the insurance carrier shall pay on behalf of the insured governmental entity to a limit of not less than one hundred thousand dollars ($100,000) per person limited to three hundred thousand dollars ($300,000) in any one (1) accident where two (2) or more persons have claims or judgments.

2. In respect to damage or loss of property, the insurance carrier shall pay on behalf of the insured governmental entity to a limit of not less than one hundred thousand dollars ($100,000) because of damage or loss of property in any one (1) accident.

SECTION 25. Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of the act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid. This section shall not be construed to prohibit any such
insurance policy, rider or endorsements from containing standard and customary exclusions of coverages which the insurance commissioner deems to be reasonable and prudent upon considering the availability and the cost of such insurance coverages.

SECTION 26. If any judgment or claim against a governmental entity under this act exceeds one hundred thousand dollars ($100,000) for damage to property, the court shall reduce the amount of the judgment or claim to a sum equal to the one hundred thousand dollars ($100,000) minimum requirement unless the governmental entity has secured insurance coverage in excess of the minimum requirement in which event the court shall reduce the amount of the claim or judgment to a sum equal to the applicable limits provided in the insurance policy.

If any judgment or claim against a governmental entity under this act exceeds the one hundred thousand dollars ($100,000) per person limited to three hundred thousand dollars ($300,000) in any one (1) accident where two (2) or more persons have claims or judgments on account of personal injury or death, the court shall reduce the amount to the minimum requirement unless the governmental entity has secured insurance coverage in excess of the minimum requirement. In this event the court shall reduce the amount of the claim or judgment to a sum equal to the applicable limits provided in the insurance policy.

SECTION 27. Notwithstanding any provisions of law to the contrary, all political subdivisions shall have authority to levy an annual property tax in the amount necessary to pay the premium for insurance as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; provided, that the revenues derived therefrom may not be used for any other purpose.

SECTION 28. Notwithstanding any provisions of law to the contrary and in the event there are no funds available, the political subdivision shall levy and collect a property tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act where the political subdivision has failed to purchase insurance to cover a risk created under the provisions of this act.

SECTION 29. That Sections 41-3504, 41-3505 and 41-3506, Idaho Code, be, and the same are hereby repealed.

SECTION 30. The provisions of this act are hereby declared 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 remaining portions of this act.

SECTION 31. An emergency existing therefor, which emergency is hereby declared to exist, sections 19, 20 and 21 of this act shall be in full force and effect on and after its passage and approval.

Approved March 20, 1971.

CHAPTER 151
(H. B. No. 182)

AN ACT
AMENDING SECTION 42-221, IDAHO CODE, RELATING TO FEES OF THE DEPARTMENT OF WATER ADMINISTRATION BY PROVIDING NEW QUANTITIES AND NEW FEES FOR THE QUANTITY OF WATER APPROPRIATED.

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

SECTION 1. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. - The department of water administration shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations required of the department in connection with the issuance of permits and licenses as provided in this chapter:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.5-0.2 c.f.s. or less or for a storage volume of 50-20 acre feet or less. $ 10.00
2. For a quantity greater than 0.5-0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 50-20 acre feet but not exceeding 100 acre feet. $20.00 $ 25.00
3. For a quantity greater than 1.0 c.f.s. but not exceeding 17-20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 1,700-2,000 acre feet. $20.00 $ 25.00
   plus $5.00 $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. For a quantity in excess of 17.0 c.f.s. or 1,700 acre feet... $ 100.00.
   For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or
for a storage volume greater than 2,000 acre feet but not exceeding
10,000 acre feet .............................. $ 215.00
plus $5.00 for each additional c.f.s. or part thereof or 100 acre feet or
part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0
c.f.s., or for a storage volume greater than 10,000 acre feet but not
exceeding 50,000 acre feet ............................ $ 615.00
plus $1.00 for each additional c.f.s. or part thereof or 100 acre feet or
part thereof over the first 100.0 c.f.s. or 10,000 acre feet.
6. For a quantity greater than 500 c.f.s., or for a storage volume
greater than 50,000 acre feet ............................ $1,015.00
plus $0.10 for each additional 1.0 c.f.s. or part thereof or 100 acre feet
or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.
B. For filing application for change of point of diversion, place, period,
or nature of use of water; for exchange of water; or for an extension of time
within which to resume the use of water under a vested right:
1. For a quantity of 0.5-0.2 c.f.s. or less or for a storage volume of 20
acre feet or less .............................. $ 10.00
2. For all other amounts ............................ $20.00 $ 30.00
C. For filing application for amendment of permit ............................ $ 10.00
D. For filing claim to use right ............................ $ 10.00
E. For readvertising application for permit, change, exchange, or
extension to resume use ............................ $ 10.00
F. For certification, each document ............................ $ 1.00
G. For making photo copies of office records, maps and documents for
public use ......... A reasonable charge as determined by the department.

All fees received by the department of water administration under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration fund.

Approved March 20, 1971.
CHAPTER 152
(H. B. No. 100 as amended)

AN ACT

AMENDING SECTION 42-501, IDAHO CODE, RELATING TO THE APPROPRIATION OF WATER BY THE DEPARTMENT OF INTERIOR OF THE UNITED STATES BY PROVIDING THAT THE DEPARTMENT OF WATER ADMINISTRATION COLLECT A FEE OF TEN DOLLARS FOR SUCH PERMIT.

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

SECTION 1. That Section 42-501, Idaho Code, be, and the same is hereby amended to read as follows:

42-501. APPROPRIATION BY UNITED STATES GRAZING DIVISION BUREAU OF LAND MANAGEMENT, DEPARTMENT OF INTERIOR — FEE — CONDITIONS OF PERMIT — FLOW. — The bureau of land management of the department of interior of the United States may appropriate for the purpose of watering livestock any water not otherwise appropriated, on the public domain. The department of water administration shall, upon application in such form and of such content as it shall by rule prescribe issue permit and license and certificate of water right within a reasonable time in such form as it shall prescribe for such appropriation. With each such application there shall be paid to the department of water administration a fee of ten dollars ($10) and there shall be no further fee required for the issuance of the permit or license and certificate of water right, nor for any other proceedings in connection with such application. Such permit, license and certificate of water right shall be conditioned that the water appropriated shall never be utilized thereunder for any purpose other than the watering of livestock without charge therefor on the public domain. The maximum flow for which permit, license and certificate of water right may issue hereunder shall be five (5) miner's inches, and the maximum storage for which permit, license and certificate of water right may issue hereunder shall be fifteen (15) acre feet in any one storage reservoir.

Approved March 20, 1971.
CHAPTER 153
(H. B. No. 181)

AN ACT
AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY ADDING A NEW SECTION TO BE DESIGNATED AS SECTION 42-1414, IDAHO CODE, PROVIDING THAT A FEE SHALL ACCOMPANY A NOTICE OF CLAIM TO APPROPRIATE PUBLIC WATERS.

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

SECTION 1. That Chapter 14, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 42-1414, Idaho Code, and to read as follows:

42-1414. FEE FOR FILING NOTICE OF CLAIM. — The department of water administration shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the quantity of water claimed which shall be determined on the same basis as the fee for filing an application for a permit to appropriate the public waters of this state as provided in section 42-221, Idaho Code, except that where such claim is in connection with a water right established pursuant to a valid permit or license previously issued by the department of water administration or a water right which has previously been adjudicated by a state or federal court, the claimant shall pay a filing fee of only ten dollars ($10).

Approved March 20, 1971.

CHAPTER 154
(H. B. No. 244)

AN ACT
AMENDING CHAPTER 38, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 63-3815, IDAHO CODE, CREATING A SMALL CLAIMS DIVISION OF THE BOARD OF TAX APPEALS AND DEFINING ITS JURISDICTION; AMENDING CHAPTER 38, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 63-3816, IDAHO CODE, PROVIDING THE TAXPAYER
WITH AN ELECTION TO PROCEED IN THE SMALL CLAIMS DIVISION OF THE BOARD OF TAX APPEALS; AMENDING CHAPTER 38, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 63-3817, IDAHO CODE, PROVIDING THAT PROCEEDINGS IN THE SMALL CLAIMS DIVISION SHALL BE INFORMAL, AUTHORIZING THE BOARD TO HEAR SUCH TESTIMONY AND RECEIVE SUCH EVIDENCE AS MAY HAVE VALUE FOR A FAIR AND EQUITABLE DETERMINATION OF THE CASE, TAKING SMALL CLAIMS PROCEEDINGS OUT OF THE ADMINISTRATIVE PROCEDURES ACT, AND AUTHORIZING A TAXPAYER TO APPEAR ON HIS OWN BEHALF OR BE REPRESENTED BY AN ATTORNEY, ACCOUNTANT OR SUCH OTHER PERSONS AS PERMITTED BY THE BOARD OF TAX APPEALS; AMENDING CHAPTER 38, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 63-3818, IDAHO CODE, ALLOWING A TAXPAYER TO DISMISS HIS CASE BUT THAT SUCH DISMISSAL WILL NOT VOID HIS ELECTION TO PROCEED IN THE SMALL CLAIMS DIVISION; AMENDING CHAPTER 38, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 63-3819, IDAHO CODE, PRESCRIBING THE FORM AND CONTENT OF SMALL CLAIMS DIVISION DECISIONS AND JUDGMENTS, AND PROVIDING THAT SUCH JUDGMENTS SHALL NOT BE CONSIDERED AS PRECEDENT OR HAVING ANY FORCE OR EFFECT IN OTHER CASES OR PROCEEDINGS; AMENDING CHAPTER 38, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AS SECTION 63-3820, IDAHO CODE, PROVIDING FOR APPEAL WHERE A CASE IS OF SUBSTANTIAL IMPORTANCE BECAUSE OF PRINCIPLE, PUBLIC INTEREST OR INTEREST IN THE UNIFORM ADMINISTRATION OF TAX LAWS.

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

SECTION 1. That Chapter 38, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 63-3815, Idaho Code, and to read as follows:

63-3815. SMALL CLAIMS DIVISION OF BOARD OF TAX APPEALS — JURISDICTION. — 1. There shall be a division of the Idaho board of tax appeals known as the small claims division.
2. Members of the board of tax appeals shall sit as members of the small claims division.

3. The small claims division shall have jurisdiction of the following classes of cases upon election by the taxpayer pursuant to section 63-3816, Idaho Code:

(a) an appeal by a taxpayer from the state tax commission for refund of income taxes authorized by section 63-3072, Idaho Code, where the refund claimed does not exceed one hundred dollars ($100), exclusive of interest and penalties;

(b) an appeal by a taxpayer from the state tax commission redetermination of an income tax deficiency authorized by section 63-3049, Idaho Code, where the protested deficiency does not exceed one hundred dollars ($100), exclusive of interest and penalties;

(c) an appeal by a taxpayer from the state tax commission for refund of sales taxes authorized by section 63-3626, Idaho Code, where the refund claimed does not exceed one hundred dollars ($100), exclusive of interest and penalties;

(d) an appeal by a taxpayer from the state tax commission redetermination of a sales tax deficiency authorized by section 63-3632, Idaho Code, where the protested deficiency does not exceed one hundred dollars ($100), exclusive of interest and penalties;

(e) an appeal by a taxpayer from any county board of equalization decision, or failure of any county board of equalization to make a decision which has the effect of:

   (1) denying an exemption claim in whole or part under section 63-401, Idaho Code, or

   (2) concerning the value of property for ad valorem tax purposes authorized by section 63-2210, Idaho Code, where the full market value of the property, including improvements, brought into question under (1) or (2) of this subsection does not exceed twenty-five thousand dollars ($25,000) on real property, or ten thousand dollars ($10,000) on personal property, exclusive of interest and penalties;

(f) an appeal by a taxpayer from a decision of any county officer, or failure of any county officer to make a decision, which has the effect of denying in whole or part a petition for cancellation of ad valorem taxes, if such appeal is otherwise authorized by section 63-3811, Idaho Code, and where the full market value of the property, including
improvements, which is subject of the taxes sought to be cancelled does not exceed twenty-five thousand dollars ($25,000) on real property, or ten thousand dollars ($10,000) on personal property, exclusive of interest and penalties.

SECTION 2. That Chapter 38, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 63-3816, Idaho Code, and to read as follows:

63-3816. METHOD OF ELECTION BY TAXPAYER TO PROCEED IN SMALL CLAIMS DIVISION — ELECTION NOT REVOCABLE. — A taxpayer may elect to proceed in the small claims division of the board of tax appeals by filing a written notice thereof within twenty (20) days of the date upon which notice that the board of tax appeals has received his appeal is mailed or served. If the taxpayer elects to proceed in the small claims division, the election may not be revoked and the taxpayer will have no further right of appeal to the district court under section 63-3812, Idaho Code, except as provided in section 63-3820, Idaho Code.

SECTION 3. That Chapter 38, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 63-3817, Idaho Code, and to read as follows:

63-3817. PROCEEDINGS IN SMALL CLAIMS DIVISION TO BE INFORMAL — ADMISSIBLE EVIDENCE — PROCEEDINGS NOT SUBJECT TO ADMINISTRATIVE PROCEDURES ACT — PERSONS PERMITTED TO APPEAR. — Proceedings in the small claims division shall be informal, and the board member or members may hear such testimony and receive as evidence matters having value as proof for a just and equitable determination of the case, except that all testimony shall be given under oath. Proceedings in the small claims division shall not be subject to title 67, chapter 52, Idaho Code. A party may appear on his own behalf or may be represented or accompanied by an attorney, accountant or such other person as the board may permit to be present and participate in the proceeding before the small claims division.

SECTION 4. That Chapter 38, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 63-3818, Idaho Code, and to read as follows:

63-3818. VOLUNTARY DISMISSAL BY TAXPAYER — EFFECT. — At any time prior to entry of judgment, a taxpayer may voluntarily dismiss his case in the small claims division by notifying the clerk of the board in writing, but such dismissal shall not have the effect of revoking the election
specified in section 63-3816, Idaho Code.

SECTION 5. That Chapter 38, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 63-3819, Idaho Code, and to read as follows:

63-3819. DECISIONS AND JUDGMENTS OF SMALL CLAIMS DIVISION. – In rendering a decision on a matter in the small claims division, the board shall not make findings of fact or conclusions of law, but shall only make a simple statement identifying the prevailing party and describing the relief, if any, to be granted. The judgment in the small claims division shall be conclusive upon all parties and may not be appealed, except as provided in section 63-3820, Idaho Code, and may include orders to the state tax commission, board of equalization and other proper officers to correct an assessment roll or a tax roll, or both, modify or cancel a deficiency, pay or allow a refund, or such other action as may be necessary to effectuate the judgment. A decision or judgment shall not be considered as judicial precedent or be given any force or effect in any other case, hearing or proceeding.

SECTION 6. That Chapter 38, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 63-3820, Idaho Code, and to read as follows:

63-3820. APPEALS FROM SMALL CLAIMS DIVISION. – Notwithstanding the provisions of sections 63-3816 and 63-3819, Idaho Code, an appeal of a judgment rendered by the small claims division of the board of tax appeals may be taken to the district court in accordance with section 63-3812, Idaho Code, if a majority of the board of tax appeals, upon application by the party desiring to appeal within thirty (30) days of the date that notice of the board's judgment is mailed or served, determines that any question raised or resolved in the matter decided is of substantial importance on account of principle, public interest or interest in the uniform administration of the tax or taxes subject of the decision. If a party makes application to the board of tax appeals for a determination of importance as provided herein, the board of tax appeals shall issue its certificate either granting or denying the application, which certificate shall also set forth the reasons for the board’s determination.

An appeal of a judgment authorized by a certificate determining substantial importance shall be initiated by the filing of a notice of appeal in accordance with section 63-3812, Idaho Code, within thirty (30) days of the date that the certificate is mailed or served.
Review of a certificate of the board of tax appeals denying an application for determination of importance may be sought by a party aggrieved thereby, either in the district court of his county of residence, the district court in which the property is situated if the matter before the board concerns ad valorem taxes, or the district court of Ada county, upon the filing of an affidavit of meritorious appeal with the appropriate district court within thirty (30) days of the date that the board's certificate is mailed or served. The affidavit shall allege the nature of the questions to have been determined by the board of tax appeals in rendering the judgment sought to be appealed, and the reasons such questions are of substantial importance. The affidavit shall also set forth such other matters which are pertinent to the court's review of the board's determination, including the certificate being reviewed.

If the district court determines that the matter has substantial importance in accordance with the standards set out in this section, the appeal may proceed under section 63-3812, Idaho Code, upon the filing of a notice of appeal within thirty (30) days of the date that notice of the court's determination is mailed or served.

Approved March 20, 1971.

CHAPTER 155
(H. B. No. 202)

AN ACT
GENERAL IS DIRECTOR HE SHALL RECEIVE NO ADDITIONAL SALARY AS DIRECTOR; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 46-1002, Idaho Code, be, and the same is hereby amended to read as follows:

46-1002. DEPARTMENT OF DISASTER RELIEF AND CIVIL DEFENSE CREATED. — There is hereby created within the executive branch of the state government office of the adjutant general a department of disaster relief and civil defense.

SECTION 2. That Section 46-1003, Idaho Code, be, and the same is hereby amended to read as follows:

46-1003. ADJUTANT GENERAL REPRESENTING GOVERNOR. — In all matters of disaster relief and civil defense, the adjutant general shall represent the governor, and he shall coordinate the activities of all of the state agencies handling such matters on behalf of the governor with the director of the department of disaster relief and civil defense hereinafter created.

SECTION 3. That Section 46-1004, Idaho Code, be, and the same is hereby amended to read as follows:

46-1004. DIRECTOR OF DEPARTMENT — APPOINTMENT — COMPENSATION. — There is hereby created within the department of disaster relief and civil defense the office of director. The director shall be appointed by the governor and the governor may appoint the adjutant general and except when the adjutant general is director he shall not hold any other state office; he shall hold office during the pleasure of the governor and he shall be paid not less than one dollar nor more than four thousand five hundred dollars per annum, such rate of pay to be fixed by the governor, but when the adjutant general is director he shall receive no additional salary as director.

SECTION 4. 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 March 20, 1971.
CHAPTER 156
(H. B. No. 96 As Amended, As Amended in Senate)

AN ACT
PROVIDING FOR THE IMPORTATION, DISTRIBUTION, AND RETAIL SALE OF WINE CONTAINING NOT MORE THAN FOURTEEN PER CENT ALCOHOL BY VOLUME BY PERSONS OTHER THAN THE STATE LIQUOR DISPENSARY; PERMITTING THE PRIVATE RETAIL SALE OF WINE WITHIN THE BOUNDARIES OF COUNTIES; PROVIDING FOR THE LICENSING OF IMPORTERS, DISTRIBUTORS, AND RETAILERS OF WINE; PROVIDING FOR AN EXCISE TAX ON WINE AND THE COLLECTION THEREOF; REGULATING THE HOURS AND PLACES FOR SALE OF WINE; PROVIDING FOR SUSPENSION, REVOCATION, OR REFUSAL TO ISSUE OR RENEW LICENSES HEREUNDER; PROVIDING FOR THE LICENSING OF EMPLOYEES OF RETAILERS, DISTRIBUTORS, AND IMPORTERS; PROHIBITING CERTAIN CONDUCT ON THE PART OF IMPORTERS AND DISTRIBUTORS; PROVIDING AUTHORITY FOR THE COMMISSIONER OF LAW ENFORCEMENT AND THE STATE TAX COMMISSION TO ADOPT RULES AND REGULATIONS FOR THE ENFORCEMENT AND ADMINISTRATION OF THIS ACT; PROHIBITING PERSONS UNDER THE AGE OF TWENTY-ONE YEARS FROM POSSESSING, BUYING OR CONSUMING WINE; PROHIBITING MISREPRESENTATION OF AGE FOR PURPOSES OF INDUCING THE SALE OF WINE; PROHIBITING PERSONS FROM DRIVING UPON A PUBLIC HIGHWAY WHILE CONSUMING OR POSSESSING AN OPEN CONTAINER OF WINE; PROVIDING PENALTIES; PROVIDING FOR SEVERABILITY OF THE PROVISIONS OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. This act shall be known and designated as the “County Option Kitchen and Table Wine Act”.

SECTION 2. The purpose of this act is to regulate the importation, distribution, and sale, both at wholesale and retail, of wines customarily used in home and family dining and cooking while reserving to each county of this state the right to prohibit the distribution or sale of wine within their borders. This act shall not be construed to affect laws regulating the retail sale of alcoholic beverages, nor shall it be construed to in any way enlarge
the class of persons who may lawfully buy, possess, or consume any variety of wine whatever its alcoholic content.

SECTION 3. The following terms as used in this act are hereby defined as follows:

(a) "Wine" shall mean any alcoholic beverage containing not more than fourteen per cent (14%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(b) "Commissioner" means the commissioner of law enforcement of the state of Idaho.

(c) "Retail wine license" means a license issued by the commissioner, authorizing a person to sell wine at retail.

(d) "Wine distributor's license" means a license issued by the commissioner to a person authorizing such person to distribute wine to retailers within the state of Idaho.

(e) "Wine importer's license" means a license issued by the commissioner to a person authorizing such person to import wine into the state of Idaho and to sell and distribute wine to a distributor.

(f) "Retailer" means a person to whom a retail wine license has been issued.

(g) "Distributor" means a person to whom a wine distributor's license has been issued.

(h) "Importer" means a person to whom a wine importer's license has been issued.

(i) "Person" includes an individual, firm, copartnership, association, corporation, or any group or combination acting as a unit, and includes the plural as well as the singular unless the intent to give a more limited meaning is disclosed by the context in which it is used.

(j) All other words and phrases used in this act, the definition of which is not herein given, shall be given their ordinary and commonly understood and accepted meaning.

SECTION 4. There is hereby granted to the board of county commissioners of each of the several counties of this state the right and authority to permit the sale of wine, as defined in this act, within the borders of the several counties of this state, which may be exercised in the following manner: (a) the board of county commissioners of each county of this state may, by resolution regularly adopted, provide that retail sale of wine, as defined in this act, shall be permitted within the county, and upon a certification of such resolution to the commissioner of law enforcement, a
retail wine license shall thereafter be issued for premises within such county so long as such resolution remains in effect; or (b) the board of county commissioners of each of the several counties of this state may submit the question of permitting the sale of wine at retail within the boundaries of the county to the electors of the county. The board of county commissioners may make an order calling an election to be held within said county in the manner provided by law for holding elections for county officers. All laws of the state of Idaho relating to the holding of elections for county officers shall apply to the holding of the election provided for in this section, except where specifically modified herein. Such election may also be called upon written petition of not less than twenty percent (20%) of the registered, qualified electors of the county for the last general election. In the event said petition is presented, the governing body of the county shall, within five (5) days after the presentation of said petition, meet and determine the sufficiency thereof by ascertaining whether said petition is signed by the required number of registered, qualified electors of the county affected. In the event the governing body of said county determines that said petition is signed by the required percentage of registered, qualified electors, said governing body shall forthwith make an order calling an election to be held within said county in the manner provided by law for holding elections for county officers. Such election shall be held on a day fixed by the county commissioners not more than thirty (30) days after the call thereof. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election. The county recorder must furnish the ballots to be used in such election, which ballots must contain the following words:

"Sale of wine at retail, Yes,"
"Sale of wine at retail, No,"

and the elector in order to vote must mark an "X" opposite one (1) of the questions in the space provided therefor. Upon a canvass of the votes cast, the county recorder shall certify the result thereof to the commissioner. If a majority of the votes cast are "Sale of wine at retail, Yes," licenses shall be issued in said county as in this act provided. If a majority of the votes cast are "Sale of wine at retail, No," then no license shall be issued in said county unless thereafter authorized by a subsequent election in said county which may be called in the manner provided for herein; (c) no resolution or election prohibiting the sale of wine within the boundaries of any county of this state shall have an effective date prior to the end of the then current calendar year if at the time of the adoption thereof there shall be any
outstanding valid retail wine licenses in good standing for premises within such county.

SECTION 5. (a) Wine, as defined in this act, may be manufactured, imported into this state, possessed, distributed and sold in this state in the manner and under the conditions prescribed in this act and not otherwise.

(b) Nothing contained in this act shall prohibit the state liquor dispensary from selling wine pursuant to the Idaho liquor act in any outlet of the state liquor dispensary.

SECTION 6. Before any person shall manufacture, import into this state, possess for resale, or distribute or sell wine within the state of Idaho, he shall apply to the commissioner for a license to so do. The application form shall be prescribed and furnished by the commissioner and require that the applicant therein show that he possesses all of the qualifications and none of the disqualifications of a licensee. A person may apply for and receive a license as both a distributor and importer, if otherwise qualified therefor, and shall pay the license fee required pursuant to this act for each license. If the commissioner is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions of and upon the conditions specified in this act. The license or licenses issued shall be at all times prominently displayed in the place of business of the licensee. If the commissioner determines that the applicant is not properly qualified, he shall refuse to issue a license and shall forthwith so notify the applicant and shall return to the applicant with such notification, three-fourths (3/4) of the license fee remitted with the application. A separate retail wine license and wine distributor's license shall be required for each premise. Provided, however, nothing herein shall prohibit a distributor or retailer from possessing licenses for more than one (1) premise.

SECTION 7. No retail wine license or wine distributor's license shall be issued to an applicant who at the time of making the application:

(a) If an individual, is not a citizen of the United States and has not resided within the state of Idaho for a period of thirty (30) days immediately prior to making the application;

(b) If a partnership, does not include at least one (1) member thereof who is a citizen of the United States and who has resided within the state of Idaho for a period of at least thirty (30) days;

(c) If a corporation, has not qualified as required by law to do business in the state of Idaho;

(d) Has had a wine distributor's license, retail wine license, or wine
importer's license, revoked by the commissioner within three (3) years from
the date of making such application;
(e) Has been convicted of a violation of the laws of this state or of the
United States governing the sale of alcoholic beverages, wine, or beer, within
three (3) years from the date of making such application;
(f) Has been convicted of a felony or been granted a withheld
judgment following an adjudication of guilt of a felony within five (5) years
from the date of making such application;
(g) If an individual or partnership, either the individual or at least one
(1) of the partners of a partnership is not twenty-one (21) years of age or
older;
(h) If the application is for a retail wine license, the commissioner finds
that the applicant does not possess a retail beer license issued by the
commissioner.

SECTION 8. No wine importer's license shall be issued to an applicant
who at the time of making the application:
(a) Has not executed an agreement in writing with the commissioner
that such importer and every person employed by it or acting as its agents
other than distributors and retailers, will faithfully comply with and observe
all the provisions of the laws of the state of Idaho relating to the
importation, sale and distribution of wine and all rules and regulations
adopted by the commissioner pursuant to this act;
(b) Has had a wine distributor's license, retail wine license, or wine
importer's license, revoked by the commissioner within three (3) years from
the date of making such application;
(c) Has been convicted of a violation of the laws of this state or of the
United States governing the sale of alcoholic beverages, wine, or beer, within
three (3) years from the date of making such application;
(d) Has been convicted of a felony or been granted a withheld
judgment following an adjudication of guilt of a felony within five (5) years
from the date of making such application.

SECTION 9. No importer shall import wine into the state of Idaho for
resale within the state to a destination other than the premises of a
distributor. No distributor shall sell or distribute wine in this state except
from stocks of wine maintained in a warehouse or warehouses owned or used
by such distributor in the conduct of his business as such. All records which
a distributor is by law or regulation required to maintain, shall be kept at his
warehouse, or if such distributor shall have more than one warehouse, then
in the warehouse of such distributor which he shall designate as his principal warehouse.

SECTION 10. No distributor may store or purchase wine for purposes of storage or resale unless said wine has been received from persons holding a valid wine importer's license or valid wine distributor's license.

SECTION 11. No distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, except to the holder of a valid retail wine license. No distributor shall permit, for a consideration, wine to be consumed upon the premises of the distributor.

SECTION 12. Any law to the contrary notwithstanding, including but not limited to section 23-914, Idaho Code, the holder of a license for the retail sale of liquor by the drink as defined in chapter 9, title 23, Idaho Code, is hereby authorized to purchase wine from persons holding valid wine distributor's licenses.

SECTION 13. No retailer shall purchase or receive wine for resale except from a distributor.

SECTION 14. Every distributor and importer shall have, and notify the commissioner, of a place of business within the state of Idaho where such licensee will and shall keep a record of his or its imports into, and sales of wine within, the state, including the date, quantity, from whom purchased for import, the carrier or other person or means by whom or which transported for import, and the name and address of the purchaser, and shall so keep such record of each such sale or import for a period of eighteen (18) months thereafter. Such licensee shall, on or before the fifteenth (15th) day of each month, make a return, under oath, to the commissioner of the amount of wine sold in, and imported by him into, the state of Idaho for the preceding calendar month, which shall be upon forms furnished by the commissioner. The commissioner may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with this act and whether or not all taxes and fees provided for by this act are being fully paid. The commissioner shall have the right at any time and it shall be his duty not less than once in each calendar year, to make an examination of each distributor's and importer's books, records and premises, and such other matters as may assist him in verifying the accuracy of such returns, and retain in his office for not less than two (2) years, a report thereof. An application for, and acceptance of a license by a distributor, importer or retailer shall constitute consent to, and be authority for, entry by the commissioner or his authorized agents, upon any premises
related to the licensee's business, or wherein are, or should be, kept, any of
the licensee's books, records, supplies or other property related to said
business, and to make the inventory, check and investigations aforesaid with
relation to said licensee or any other licensee.

SECTION 15. (a) Each importer shall pay to the state of Idaho an
annual license fee of two hundred dollars ($200);
(b) Each distributor shall pay to the state of Idaho an annual license
fee of two hundred dollars ($200) for each separate warehouse used for the
purpose of or in connection with the sale or distribution of wine within this
state.
(c) Each retailer shall pay to the state of Idaho an annual license fee of
one hundred dollars ($100) for each premises for which a license is issued for
the retail sale of wine.
(d) In addition to the fee required by subsection (c) of this section,
each retailer shall pay an annual license fee of not to exceed one hundred
dollars ($100) to the county in which the licensed premises are located. If
the licensed premises are located within the incorporated limits of a city, the
retailer shall pay an annual license fee of not to exceed one hundred
dollars ($100) to such city. Each city and county within this state are hereby
authorized and empowered to determine the retail license fees to be paid by
each retailer licensed pursuant to the terms and conditions of this act. No
retail wine license issued by the commissioner shall authorize the retailer to
sell wine at retail unless such person possesses a county and city license as
may be required by the governing board thereof.

SECTION 16. All licenses issued pursuant to the provisions of this act
shall expire at one o'clock a.m. on January 1st of the year following the date
of issuance of the license. Renewal of such licenses shall be on forms
prescribed and furnished by the issuing authority. The renewal form shall be
submitted, together with the required license fees, and an affidavit verifying
that the information contained in the original application is unchanged, or if
there are material changes, indicating such changes.

SECTION 17. (a) No wine distributor's license or retail wine license
may be transferred to another person, including an executor, administrator,
or trustee in bankruptcy of the estate of the licensee, unless the transferee
shall first have obtained the approval of the commissioner to such transfer
upon application containing the substantially same information required of
an applicant for a wine distributor's license or retail wine license, as the case
may be. If the transferee possesses all of the qualifications and none of the
disqualifications for such license, the commissioner shall approve the
transfer, which approval shall be attached and made a part of the license. The fee for each transfer of a wine distributor’s license or a retail wine license shall be twenty dollars ($20), which fee shall accompany the application for transfer.

(b) Application to transfer a wine distributor’s license or retail wine license from one location to another shall be made to the commissioner on forms prescribed and furnished by the commissioner. The commissioner shall approve any such transfer upon submission of the application and receipt by the commissioner of a transfer fee of twenty dollars ($20).

SECTION 18. The governing board of any county or city within this state is hereby authorized and empowered to adopt such ordinances and resolutions as may be deemed necessary by the governing board of said county or city in the interests of public health and welfare or for the orderly, moral and responsible conduct of the business of selling and distributing wine within the boundaries of such city or county, including but not limited to hours, days, places and conditions of sale and advertising practices.

SECTION 19. There is hereby imposed an excise tax of forty-five cents ($.45) per gallon upon all wine imported into this state for purposes of resale, and upon all wines sold, transported, stored, delivered, received, or produced for use within the state of Idaho pursuant to this act.

(a) Every sale of wine by an importer to a distributor resulting in a shipment or transportation of such wine into this state, shall constitute a sale of wine for resale or consumption in this state, whether said sale is made within or without this state, and such importer shall be liable for the payment of taxes thereon.

(b) Every sale of wine manufactured in this state to a distributor or retailer or to a consumer in this state shall constitute a sale of wine for resale or consumption in this state and such manufacturer shall be liable for the payment of taxes thereon.

(c) Resale of wine by a distributor for the purpose of and resulting in export of such wine from this state for resale outside this state shall entitle such distributor to a refund of taxes theretofore paid on such wine.

(d) When wine shall be destroyed by breakage or has spoiled or otherwise become unfit for beverage purposes after payment of taxes thereon, and prior to delivery to a retailer by a distributor, such distributor, upon satisfactory proof of destruction or spoilage, shall be entitled to a refund of taxes paid thereon.

SECTION 20. Each person liable for payment of excise taxes pursuant
to the terms of this act shall at all times have in effect and on file with the state tax commission, a bond executed by a surety authorized to do business in this state, in form and amount acceptable to the state tax commission, which bond shall be payable to the state of Idaho and conditioned that such person shall pay all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest.

SECTION 21. If any taxes on wine shall not be paid by the person liable therefor when due, a penalty of ten per cent (10%) of the taxes payable shall be assessed against and paid by such person, together with interest at the rate of one per cent (1%) per month or major fraction thereof, computed on both said tax and penalty. For purposes of this section, the fifteenth day of any month shall fall upon Saturday, Sunday, or a holiday, the due date for the report and the payment of taxes required by this act shall be the first business day thereafter. Waiver of penalty and interest may be allowed by the state tax commission when delay in receipt of any monthly report or in receipt of any payment of taxes due therewith shall be found by the state tax commission to be justifiable and without fault on the part of the person liable therefor.

SECTION 22. Each person liable for the payment of taxes on wine as provided for in section 19 of this act, shall, on or before the fifteenth day of each month, file a written report with the state tax commission showing all sales of wine for resale or consumption in this state made by such person during the calendar month immediately preceding. Taxes payable with respect to such sale shall be paid by the person liable therefor at the time such report is filed.

SECTION 23. The state tax commission shall be, and it is hereby authorized to adopt and promulgate such rules and regulations as it may be necessary to assure payment of taxes on wine, including but not limited to, rules and regulations prescribing the form and content of monthly reports required; requiring the persons liable for payment of taxes on wine to show on such monthly reports information concerning their inventories, purchases, sales and shipments of wine, requiring monthly informational reports from distributors concerning their inventories, purchases, sales and shipments of wine; requiring reports from carriers, both public and private, concerning deliveries of wine made in this state by such carriers, and shipments of wine made by such carriers out of this state; requiring distributors and persons liable for payment of taxes on wine to maintain complete and accurate books, records and accounts on transactions involving wine; and establishing grounds upon which delay in filing reports and paying
taxes imposed upon wine may be considered justifiable and without fault on the part of the person liable therefor.

SECTION 24. No employee of any importer or distributor shall sell, solicit, or take orders for wine in this state without having a permit therefor issued by the commissioner. As used herein, the term "employee" shall include an independent contractor or agent of the importer or distributor. There shall be paid to the state of Idaho by the employee or the employer or distributor on his behalf, a fee of five dollars ($5) for the issuance of such permit.

SECTION 25. No importer or distributor shall:
(a) Directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee, have any financial interest in any retailer's business; or
(b) Own or control any real property upon which a retailer conducts his business; provided, however, that this section shall not be deemed to prohibit the ownership or control of real property upon which the retailer has conducted his business continuously for more than one (1) year prior to the effective date of this act; and during which time the importer or distributor owned or controlled the real property; or
(c) Directly or indirectly aid or assist any retailer by giving such retailer, or any employee thereof, any discounts, premiums, or rebates in connection with any sale of wine, or by furnishing, giving, renting, lending or selling any equipment, signs, supplies, services, or other thing of value, except beer or as expressly permitted by this act; or
(d) Enter into any lease or other agreement with any retailer to control the product or products sold by such retailer, or to provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space; provided, however, that at the request of or with the consent of a retailer, an importer or distributor, as an incident to merchandising in the ordinary course of business, and if available all licensed retailers without discrimination, may perform such services for a retailer and provide such materials to a retailer as are permitted by section 23-1033, Idaho Code, for assistance to wine retailers by brewers and wholesalers to the extent that such provisions are applicable to the sale and distribution of wine, and subject further to such regulations and rules as may be adopted by the commissioner with reference thereto.

SECTION 26. No sale or delivery of wine shall be made to any retailer, except for cash paid at the time of or prior to delivery thereof, and in no event shall any distributor extend any credit on account of such wine to a
retailer, nor shall any retailer accept or receive delivery of such wine except when payment therefor is made in cash at the time of or prior to delivery thereof. The acceptance of a first party check from a retailer by a distributor shall not be deemed an extension of or acceptance of credit hereunder if the first party check is dated with the date of or prior to delivery of the wine.

SECTION 27. No distributor shall sell or deliver wine to a retailer of a quantity less than a case lot. For purposes of this section, a "case lot" shall mean that quantity of containers of equal size containing wine which are equal to the smallest unit or quantity of containers of wine received by a distributor from an importer. Nothing contained in this section shall prohibit a distributor from mixing brands or types of wine to make up a case lot for purposes of sale or distribution to the retailer. No distributor shall purchase, receive, or sell any wine except in the original container as prepared for the market by the importer or manufacturer. No importer or distributor shall, without permission of the commissioner, adopt or use any container for wine which will contain in excess of one (1) gallon of wine.

SECTION 28. No label on a wine container shall be used or placed thereon which indicates that a retailer is the producer or the bottler thereof or which contains the name of a retailer in any manner. No distributor shall restrict the sale of wine for which the distributor has filed a price schedule in accordance with the provisions of this act to one retailer or to retail premises under common ownership or associated together in, by, or through a buying organization or agency which represents a common identity to the public; nor shall such distributor refuse to sell or distribute wine to a retailer on terms and conditions different from those terms and conditions upon which said distributor sells or distributes wine to other retailers.

SECTION 29. Each importer and distributor shall file with the commissioner a written schedule of prices to be charged by such person for wine imported into or sold within this state for resale therein. Such schedule of prices shall be uniform for buyers in the same trade area within this state, and shall set forth the following:

(a) All brands and types of products offered for sale;

(b) The delivered sale price thereof in the several trade areas of the state; and

(c) Any allowance granted for returned containers.

Such schedule of prices so filed may be changed or modified from time to time by filing with the commissioner a new schedule of prices, not less than thirty (30) days prior to the effective date thereof, and upon the filing of said new prices, the commissioner shall give notice thereof to all importers
and distributors. Such schedule of prices so filed may not be withdrawn prior to its effective date, and upon becoming effective shall remain in effect for a minimum period of thirty (30) days. Upon the filing of the original schedule of prices, and after the effective date of any schedule of prices amendatory thereto, all prices therein stated shall be strictly adhered to.

SECTION 30. For the purpose of the administration of this act, the commissioner shall make, promulgate, and publish such rules and regulations as the commissioner may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. All rules and regulations adopted pursuant to the terms of this act shall be adopted in accordance with the subject to the provisions of chapter 52; title 67, Idaho Code.

SECTION 31. The commissioner may suspend, revoke, or refuse to renew a retail wine license, wine distributor's license, or wine importer's license issued pursuant to the terms of this act for any violation of or failure to comply with the provisions of this act or rules and regulations promulgated by the commissioner or the state tax commission pursuant to the terms and conditions of this act. The commissioner may suspend, revoke, or refuse to renew an employee permit issued pursuant to the terms of section 24 of this act for failure of such employee to comply with the provisions of this act or the rules and regulations promulgated by the commissioner. Procedures for the suspension, revocation or refusal to grant or renew licenses issued under this act shall be in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 32. Retailers holding valid licenses for the retail sale of liquor by the drink pursuant to chapter 9, title 23, Idaho Code, may sell wine for consumption on or off the licensed premises. Retailers who do not possess a valid license for the retail sale of liquor by the drink shall not permit consumption of wine on the licensed premises and may sell the wine only in its original unbroken container. Wine sold for consumption on the retailer's premises may be sold only during hours that liquor by the drink can be sold pursuant to the laws of this state. Wine sold by the retailer for consumption off the premises of the retailer may be sold only during the hours that beer may be sold pursuant to the laws of this state.

SECTION 33. No person may, while operating or riding in or upon a motor vehicle upon a public highway of this state, have in his possession any wine in an open or unsealed container of any kind.
SECTION 34. (a) No person under the age of twenty-one (21) years may purchase, consume or possess wine.

(b) No person shall give, sell, or deliver wine to any person under the age of twenty-one (21) years.

(c) No person under the age of twenty-one (21) years shall by any means represent to any retailer or distributor or to any agent or employee of such retailer or distributor that he or she is twenty-one (21) years or more of age for the purpose of inducing such retailer or distributor, or his agent or employee, to sell, serve or dispense wine to such person.

(d) No person shall, by any means, represent to any retailer or distributor or the agent or employee of such retailer or distributor, that any other person is twenty-one (21) years or more of age, when in fact such other person is under the age of twenty-one (21) years, for the purpose of inducing such retailer or distributor, or the agent or employee of such retailer or distributor, to sell, serve, or dispense wine to such other person.

SECTION 35. Any person who violates any of the provisions of this act or fails to comply with any of the terms and conditions of this act shall be guilty of a misdemeanor.

SECTION 36. The provisions of this act are hereby declared 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 portions of this act.

SECTION 37. This act shall take effect upon the expiration of sixty (60) days from the end of the First Regular Session of the Forty-first Legislature of the state of Idaho; provided, however, no retail wine license shall be issued by the commissioner prior to the first day of July, 1971.

Approved March 20, 1971.

CHAPTER 157
(H. B. No. 275)
AN ACT
AUTHORIZING A NEEDS STUDY OF HIGHWAYS, ROADS AND STREETS; PROVIDING FOR THE CREATION OF A SPECIAL LEGISLATIVE COMMITTEE COMPOSED OF THE JOINT SENATE
AND HOUSE TRANSPORTATION COMMITTEES, PAYMENT OF ALLOWANCES AND EXPENSES, AND MEETING; PROVIDING THE COMMITTEE MAY MEET WITH THE DEPARTMENT OF HIGHWAYS PLANNING STUDY DIVISION, PROVIDING FOR PROGRESS REPORTS, AND PROVIDING FOR A REPORT TO THE SECOND REGULAR SESSION OF THE FORTY-FIRST IDAHO LEGISLATURE; APPROPRIATING MONEYS OUT OF THE HIGHWAY FUND FOR THE PURPOSES OF THE COMMITTEE; AND DECLARING AN EMERGENCY.

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

SECTION 1. The legislature hereby adopts the recommendation of the Idaho board of highway directors and recognizes the necessity of continuing the thorough, impartial and factual needs study of state, county, district and city streets, roads and highways being conducted by the state department of highways under the general supervision and direction of the board of highway directors and the special legislative committee created by this act.

SECTION 2. There is hereby created a special legislative committee, to be known as the legislative interim highway roads and streets needs study committee, to be composed of the current joint house and senate transportation committees, which shall hold two (2) meetings during 1971, not to exceed two (2) days each. The committee shall meet in Boise, when the Idaho board of highway directors are in session, on call of the house and senate transportation committee chairmen, and at their first meeting select their own chairman and vice-chairman.

SECTION 3. The committee may meet with the planning study division of the department of highways. Progress reports on the study shall be submitted from time to time by the department to the interim committee and the Idaho board of highway directors meeting in joint session as the committee and/or the board determines advisable. The interim committee and the board shall jointly report findings and recommendations to the Second Regular Session of the Forty-first Idaho Legislature.

SECTION 4. There is hereby appropriated out of the highway fund the sum of six thousand dollars ($6,000), or so much thereof as may be necessary, for the purpose of the highway department to pay the allowances and expenses of the interim committee established by this act. The state highway department is hereby authorized to pay, from funds appropriated herein, to individual members of the interim committee the cost of travel, food, lodging, and twenty-five dollars ($25) a day, incurred in furtherance of interim committee business.
SECTION 5. 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 March 20, 1971.

CHAPTER 158
(H. B. No. 260)

AN ACT
TO BE KNOWN AS THE "IDAHO REAL PROPERTY ACQUISITION ACT OF 1971"; PROVIDING DEFINITIONS FOR THE TERMS "OWNER, DEPARTMENT, POLITICAL SUBDIVISION, AGENCY, BUSINESS, FARM OPERATION"; PROVIDING THAT THE DEPARTMENT, POLITICAL SUBDIVISION, OR AN AGENCY MAY ACQUIRE EQUAL INTEREST IN ALL BUILDINGS, IMPROVEMENTS, AND STRUCTURES LOCATED ON PROPERTY ACQUIRED FOR PUBLIC USE AND THAT THE DEPARTMENT, POLITICAL SUBDIVISION, OR AGENCY MAY COMPENSATE THE OWNER THEREFOR ACCORDING TO THE FAIR MARKET VALUE OF SUCH STRUCTURES, BUILDINGS OR IMPROVEMENTS AS PROVIDED BY THE ACT AND PROVIDING THAT THE SECTION SHALL NOT BE INTERPRETED TO AUTHORIZE DUPLICATION OF PAYMENTS; AUTHORIZING A COURT TO AWARD, OR THE DEPARTMENT, POLITICAL SUBDIVISION, OR AGENCY TO PAY A PROPERTY OWNER COSTS, DISBURSEMENTS AND EXPENSES INCLUDING REASONABLE ATTORNEY, APPRAISAL AND ENGINEERING FEES SHOULD IT BE DETERMINED THAT THE PROPERTY CANNOT BE ACQUIRED BY EMINENT DOMAIN OR SHOULD THE DEPARTMENT, POLITICAL SUBDIVISION, OR AGENCY ABANDON SUCH PROCEEDINGS; AUTHORIZING A COURT TO AWARD, OR THE DEPARTMENT, POLITICAL SUBDIVISION, OR AGENCY TO PAY REASONABLE COSTS, DISBURSEMENTS AND EXPENSES INCLUDING ATTORNEY, APPRAISAL AND ENGINEERING FEES TO THE PREVAILING PLAINTIFF IN AN INVERSE CONDEMNATION ACTION; AUTHORIZING THE DEPARTMENT, POLITICAL SUBDIVISION,
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OR AGENCY TO ACQUIRE AN UNECONOMIC REMNANT, LANDLOCKED TRACT, OR THE TOTAL PROPERTY UNDER CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. This act shall be known as the "Idaho Real Property Acquisition Act of 1971."

SECTION 2. As used in this act:

(a) "Owner" means any individual, family, business, corporation, partnership, association, or farm operation having any right, title or interest in property which is acquired, condemned, or sought to be acquired or condemned by a department or an agency as defined in this act.

(b) "Department" means the department of highways of the state of Idaho.

(c) "Political subdivision" means any local unit or agency of government of the state of Idaho, and includes but is not limited to good roads districts, highway districts, cities and counties.

(d) "Agency" means any department, agency or instrumentality of the state of Idaho or of any political subdivision thereof which is financed in whole or in part by funds furnished by the federal government and which is authorized by the laws of the state of Idaho to acquire property by eminent domain.

(e) "Business" means any lawful activity, excepting a farm operation, conducted primarily for the purchase, sale, resale, lease and rental of personal property and real property, and for the manufacture, processing or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or by a nonprofit organization or corporation.

(f) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

SECTION 3. (a) Notwithstanding any other provision of the laws of this state, if the department, a political subdivision, or an agency acquires any interest in real property, it may acquire at least an equal interest in all buildings, structures, or other improvements located on the real property so acquired and which it determines will be adversely affected by the use to which such real property will be put.
(b) For the purpose of determining just compensation to be paid for any building, structure, or other improvement acquired under subsection (a) of this section, such building, structure, or other improvement may be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term.

(c) The tenant may be paid the greater of (1) the fair market value of the building, structure, or improvement which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or (2) the fair market value of the building, structure, or improvement when its removal is considered in the appraisal.

(d) Payment under subsection (b) or (c) of this section shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration of any such payment, the tenant shall assign, transfer, and release to the department, political subdivision, or agency all his right, title, and interest in and to such improvements.

(e) Nothing contained in subsections (b), (c), or (d) of this section shall be construed to deprive the tenant of any rights to reject payment under subsections (b), (c), or (d) of this section and to obtain payment for such property interest in accordance with applicable law.

SECTION 4. Should the court having jurisdiction of an eminent domain proceeding brought by the department, a political subdivision, or an agency seeking condemnation of an owner's property render judgment that the department, political subdivision, or agency may not acquire the property by condemnation or should the proceeding be abandoned by the department, political subdivision, or agency, the court may award or the department, political subdivision, or agency may pay the owner of the real property such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding.

SECTION 5. Should an owner of real property be required to bring an action against the department, a political subdivision, or an agency for the taking of real property by such department, political subdivision, or agency,
and prevail in such action, the court may award, or the department, political subdivision, or agency may pay, the plaintiff such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceeding.

SECTION 6. When the acquisition of real property by the department, political subdivision, or agency would leave the owner with an uneconomic remnant or a landlocked tract of land, the department, political subdivision, or agency may acquire by purchase or eminent domain the uneconomic remnant, the landlocked tract, or the whole of the real property affected by the acquisition.

SECTION 7. 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 March 20, 1971.

CHAPTER 159
(H. B. No. 26, As Amended)

AN ACT
RELATING TO INSTALMENT IMPROVEMENT BONDS; AMENDING SECTION 50-1731, IDAHO CODE, BY REMOVING THE REQUIREMENT THAT BONDS SHALL NOT BE ISSUED IN EXCESS OF THE CONTRACT PRICE AND EXPENSES, REMOVING THE $500.00 MAXIMUM BOND DENOMINATION REQUIREMENT, AND PROVIDING THAT THE RATE OF BOND INTEREST SHALL NOT EXCEED THE INTEREST RATE BORNE ON UNPAID ASSESSMENTS, PROVIDING THAT THE BONDS SHALL BE OF SUCH FORM AS MAY BE PROVIDED BY THE COUNCIL, AND PROVIDING THAT THE COUNCIL MAY REDEEM THE BONDS ON ANY INTEREST PAYMENT DATE AT A PRICE TO BE DETERMINED BY THE COUNCIL.

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

SECTION 1. That Section 50-1731, Idaho Code, be, and the same is hereby amended to read as follows:
50-1731. INSTALMENT IMPROVEMENT BONDS -- WARRANTS. --

When the council of any municipality shall, under the authority of this code or any law of this state cause any street in such municipality to be improved, or any improvement to be made authorized by this code, or any law of this state, and shall create a local improvement district and assess the cost and expense of such improvement against the property within such district as provided in this code, such council may, in its discretion, provide for the payment of the cost and expenses thereof by instalments, instead of collecting the entire assessment therefor at one (1) time, such instalments to be payable as nearly as may be in not to exceed thirty (30) equal annual payments, and for such instalments shall issue, in the name of the municipality, improvements bonds of such improvement district which shall include all the property included within such district liable to assessment for such local improvement, an equal amount of which bonds as nearly as may be, shall be by their terms made payable each year from and after the date of such bonds and shall bear interest, the rate of interest, however, in each instance to be determined by the council. Such bonds shall be in the form hereinafter provided, and shall not be issued in excess of the contract price and the expenses of such improvement to be made, and shall be of such denominations as the council shall deem proper not exceeding $500; provided, however, that only bond No. 1 of any issue shall be of a denomination other than a multiple of $100. Said bonds are to be of such denomination and to bear interest at such rate as is determined by the council, payable annually; provided, however, that in no event shall such rate of interest be greater than the rate of interest borne by the unpaid assessments. Said bonds shall be in such form as may be provided by the council and shall mature serially over a period not to exceed thirty (30) years. The council may reserve the right to redeem any or all of the bonds, at its option, on any interest payment date at such price or prices as may be determined by the council. Provided further, that in lieu of bonds, registered warrants of the district, county and water and/or sewer district excepted, may be issued in payment of the cost and expense of the improvement, such warrants to be payable as nearly as may be in equal annual instalments to be fixed by the city council, and shall be redeemable in numerical order, and subject to all the provisions of this code, relating to local improvement bonds so far as the same are applicable. If warrants are issued in lieu of bonds, then the provisions of sections 50-1763-50-1769, Idaho Code, shall apply to such warrants. Provided further, that in the event registered
warrants are issued, as herein provided, in payment of the costs and expenses of such improvements, the council may, by ordinance, provide the method for the collection of such assessments and instalments, including at its option, in addition to the methods provided for in this code, certification of delinquent instalments to the tax collector, and when so certified, the same shall be extended upon the tax rolls and collectible as are other taxes.

Approved March 20, 1971.

CHAPTER 160
(H. B. No. 251)

AN ACT
AMENDING SECTION 39-807 OF THE IDAHO CODE, RELATING TO THE DISPLAY FOR PUBLIC SALE OF ANY APPLIANCES, DRUGS OR MEDICINAL PREPARATIONS HAVING THE SPECIAL UTILITY FOR THE PREVENTION OF CONCEPTION.

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

SECTION 1. That Section 39-807, Idaho Code, be, and the same is hereby amended to read as follows:

39-807. DISPLAY FOR SALE AND PUBLIC ADVERTISING UNLAWFUL -- EXCEPTION. -- It shall be unlawful for any person, firm, corporation, co-partnership or association to display or expose for sale any of the articles described in section 39-801, Idaho Code, or any containers or packages containing or advertising the same. It shall be unlawful to publicly advertise the sale or uses of the same on any placards, bill boards, hand bills, newspapers, periodicals, signs or other printed matter or by radio; but the prohibition of this section respecting advertising shall not apply to medical and drug publications, the circulation of which is confined substantially to physicians and the drug trade, or to literature enclosed in or around the original package, or to national advertising by manufacturer of articles described in section 39-801, Idaho Code.

Approved March 20, 1971.
CHAPTER 161
(S. B. No. 1071, As Amended in the House)

AN ACT
AMENDING SECTION 58-138, IDAHO CODE, BY STRIKING THEREFROM THE REQUIREMENTS THAT NO EXCHANGE BE MADE UNLESS THE UNITED STATES AGREE TO AND GRANT TO THE STATE AN ABSOLUTE TITLE IN FEE SIMPLE WITHOUT RESERVATIONS OR RESTRICTIONS AND THAT THE STATE BOARD OF LAND COMMISSIONERS SHALL GRANT SIMILAR TITLE TO THE UNITED STATES IN EXCHANGE THEREFOR ALLOWING THE STATE BOARD OF LAND COMMISSIONERS TO GRANT ABSOLUTE TITLE IN FEE SIMPLE WITHOUT RESERVATIONS OR RESTRICTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 58-138, Idaho Code, be, and the same is hereby amended to read as follows:

58-138. EXCHANGE OF STATE LAND FOR FEDERAL LAND. - The state board of land commissioners may at its discretion exchange, and do all things necessary to exchange, with the United States, its agencies, departments, bureaus, boards, or any corporation, the majority of whose capital stock is owned by the United States, any of the state lands now or hereafter held and owned by this state for other similar lands of equal value owned by the United States, so as to consolidate state lands or aid the state in the control and management or use of state lands. Provided further the state board of land commissioners may, in its discretion, hereafter grant to and receive from the United States of America, its agencies, boards, bureaus, departments, or any corporation, the majority of whose capital stock is owned by the United States, less than fee simple title, and grant or allow such reservations, restrictions, easements or such other impairment to title as may be in the state's best interest. No exchanges shall be made involving leased lands except upon the written agreement of the lessee.

Provided, however, that no such exchange shall be made, approved, or authorized by the state board of land commissioners unless the United States shall agree to and grant the state an absolute title in fee simple without reservations or restrictions of any kind or nature whatever; and in exchange therefor the state board of land commissioners shall also grant the-
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 March 20, 1971.

CHAPTER 162
(S. B. No. 1072)

AN ACT
AMENDING TITLE 58, CHAPTER 1, IDAHO CODE, BY THE ADDITION THERETO OF A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 58-141, IDAHO CODE, CREATING A REVOLVING FUND; PROVIDING A CONTINUING APPROPRIATION THEREFROM TO THE STATE BOARD OF LAND COMMISSIONERS FOR EXPENDITURES FOR PLANNING AND DEVELOPMENT OF SEWAGE COLLECTION AND DISPOSAL FACILITIES FOR STATE LANDS; PROVIDING FOR DEPOSIT IN SAID FUND OF ALL MONIES RECEIVED BY THE STATE OF IDAHO FROM THE UNITED STATES OF AMERICA, ITS AGENCIES, BOARDS, DEPARTMENTS, BUREAUS AND COMMISSIONS FOR PLANNING AND DEVELOPMENT OF SEWAGE COLLECTION AND DISPOSAL FACILITIES FOR STATE LANDS; APPROPRIATING MONEY FROM THE GENERAL FUND TO THE REVOLVING FUND CREATED HEREIN; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 58, Chapter 1, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section to be known and designated as Section 58-141, Idaho Code, to read as follows:

58-141. REVOLVING FUND FOR PLANNING AND DEVELOPMENT OF SEWAGE COLLECTION AND DISPOSAL FACILITIES FOR STATE LANDS — APPROPRIATION. — All monies received by the state of Idaho from the United States of America, its agencies, boards, departments, bureaus and commissions for planning and development of sewage collection and disposal facilities for state lands shall
constitute a revolving fund, which fund is hereby created. All monies in the fund are hereby appropriated continually to the state board of land commissioners for planning and development of sewage collection and disposal facilities for state lands.

SECTION 2. There is hereby appropriated from the general fund to the revolving fund created in section 1 of this act, the sum of thirty-five thousand dollars ($35,000).

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 March 20, 1971.

CHAPTER 163
(S. B. No. 1083)

AN ACT
RELATING TO EXEMPTIONS FROM THE SALES TAX, AMENDING SECTION 63-3622, IDAHO CODE, BY EXEMPTION FROM SALES TAX THE SALE OF OXYGEN PRESCRIBED BY A PERSON LICENSED TO PRESCRIBE DRUGS TO HUMAN BEINGS IN THE COURSE OF HIS PROFESSIONAL PRACTICE.

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

SECTION 1. That Section 63-3622, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622. EXEMPTIONS. - There are exempted from the taxes imposed by this act the following:

(a) The sale at retail, storage, use, or other consumption of tangible personal property which this state is prohibited from taxing under the Constitution of the United States.

(b) The sale of tangible personal property to resident contractors for subsequent incorporation into real property outside this state in the performance of a contract to improve the out-of-state realty unless this provision would result in subjection of said property to a use or similar excise tax in another state.

(c) Purchases which are subject to the motor fuels tax imposed by title 49, chapter 12, Idaho Code, as amended, and motor fuels subject to tax under Table "B" of section 49-127(d)(6) (2), Idaho Code.
(d) Receipts from the sale, storage, use or other consumption in this state of tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for ultimate sale at retail within or without this state, and tangible personal property primarily and directly used or consumed in or during such manufacturing, processing, mining, farming, or fabricating operation by a business or segment of a business which is primarily devoted to such operation or operations, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation. Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change or for removing impurities or otherwise placing a product in a more marketable condition are included within this exemption, as are other articles of tangible personal property used in the actual manufacturing, processing, mining, farming or fabricating operations. This exemption does not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operation such as maintenance and janitorial equipment and supplies, and hand tools with a unit purchase price not in excess of one hundred dollars ($100) $100.00; nor does it include tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operation such as office equipment and supplies, equipment and supplies used in selling or distributing activities, in research, or in transportation activities; nor shall this exemption include motor vehicles required to be licensed by the laws of this state, without regard to the use to which such motor vehicles are put; nor shall this exemption include tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from this act by subsections (f), (g), (j), and (n) of this section.

(e) The sale or purchase of containers in the following categories:

1. Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

2. Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this act.

3. Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for filling.
(f) The sale or purchase of gas, electricity, and water when delivered to consumers.

(g) The sale or purchase of any matter used to produce heat by burning, including wood, coal, petroleum and gas.

(h) The sale or purchase of tangible personal property used for the performance of a contract on public works executed prior to the passage and approval of this act.

(i) The sale or purchase of tangible personal property used for the performance of a written contract entered into prior to the passage and approval of this act, but such exemption shall extend only until July 1, 1967.

(j) The sale or purchase, or the storage, use or other consumption of religious literature, pamphlets, periodicals, tracts and books published and sold by a bona fide church or religious denomination, no part of the net earnings of which inures to the benefit of any private individual or shareholder.

(k) The sale of meals by public or private schools under the Federal School Lunch Program and the sale of meals by a church to its members at a church function.

(l) Occasional sales of tangible personal property; providing, however, that this exemption shall not apply to the sale, purchase, or use of self-propelled motor vehicles unless they are transferred in a transaction falling within the scope of section 63-3612A(b), Idaho Code a change in the form of doing business, or section 63-3612A(c), Idaho Code the sale of a going business.

(m) The sale of articles through a coin-operated vending machine for a total consideration of ten cents ($.10) or less and individual transactions involving a total sales price of less than fourteen cents ($.14).

(n) Sales of liquor by the state liquor dispensary.

(o) Sales of drugs, sold by a registered pharmacist, and the sale of oxygen, all upon the prescription of a practitioner licensed to prescribe drugs to human beings in the course of his professional practice.

(p) Sales to the Boy Scouts of America of supplies and materials for national and international encampments within the state of Idaho and sales by the Boy Scouts of America to participants in national and international encampments within the state of Idaho if such sales are made within the confines of Farragut State Park.

(q) Sales to and purchases by hospitals, educational institutions, and
canal companies which are nonprofit organizations. As used in this subsection, these words shall have the following meanings:

1. Educational institution shall mean resident nonprofit colleges, universities, primary and secondary schools the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.

2. Hospital as used herein shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions or organizations.

3. Canal companies as used herein shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(r) The sale or purchase of tangible personal property shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state if the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(s) The sale or purchase of tangible personal property which is shipped to a point outside this state for use outside this state pursuant to a contract of sale by delivery by the vendor to such point by means of (1) facilities operated by the vendor, (2) delivery by the vendor to a carrier for shipment to a consignee at such point, or (3) delivery by the vendor to a customs broker or forwarding agent for shipment outside this state.

(t) Sales of motor vehicles and trailers for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles or trailers will be taken from the point of delivery in this state directly to a point outside this state and (2) said motor vehicles and trailers will be registered and licensed immediately under the laws of another state, will not be used in this state more than three (3) months, and will not be required to be registered and licensed under the laws of this state.
(u) To prevent evasion of the sales and use tax, it shall be presumed that all articles are subject to the taxes imposed by this act and the retailer shall have the burden of establishing the facts giving rise to such exemption by clear and convincing evidence unless the purchaser delivers to the retailer an exemption certificate in such form as the tax collector may prescribe, signed by the purchaser and setting forth the reason for the claimed exemption.

(v) Any person who gives an exemption certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000) or imprisonment for not more than one year or by both such fine and imprisonment.

Approved March 20, 1971.

CHAPTER 164
(S. B. No. 1092)

AN ACT
REPEALING SECTION 5-321, IDAHO CODE; AMENDING CHAPTER 3, TITLE 5, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 5-321, IDAHO CODE, PROVIDING FOR INTERPLEADER AND THE DEPOSIT OF PROPERTY WITH THE COURT AND THE AWARDING OF COSTS AND ATTORNEY FEES IN THE INTERPLEADER ACTION.

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

SECTION 1. That Section 5-321, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 3, Title 5, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 5-321, Idaho Code, and to read as follows:

5-321. INTERPLEADER. — In an action commenced by a person possessing specific personal property which is claimed by two (2) or more persons to determine to which the property should be delivered, or in an action for the recovery of specific personal property where a third person demands of the defendant the same property, the court in its discretion, on motion of the person possessing the property, and notice to the persons
claiming the property, whether or not they are parties to the action, may, before answer, make an order discharging the person possessing the property from liability to claiming persons and interplead such claiming person or persons in the action. The order shall not be made except on the condition that the person possessing the property shall deliver the property or its value to the clerk of the court or to such custodian as the court may direct, and unless it appears from the affidavit of the person possessing the property, filed with the clerk with the motion, that such person or persons claiming makes or make such demand without collusion with the party possessing the property. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

A person possessing the property who follows the procedure set forth above may insert in his motion for interpleader a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court. At the time of final judgment in the action, the court may make such further provision for assumption of such costs and attorney fees by one (1) or more of the adverse claimants. At the same time, the court may, in its discretion, award to the person determined to be entitled to the property his costs and reasonable attorneys' fees against an unsuccessful claimant if the claim asserted by said claimant was frivolous or without substantial merit.

Approved March 20, 1971.

CHAPTER 165

(S. B. No. 1109, As Amended)

AN ACT
RELATING TO LIABILITY INSURANCE; AMENDING SECTION 41-1824, IDAHO CODE, BY PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY ADOPT RULES AND REGULATIONS TO PROVIDE ADEQUATE NOTICE, INCLUDING BUT NOT LIMITED TO A WRITTEN STATEMENT, THAT A POLICY DOES NOT PROVIDE LEGAL LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY OF THIRD PARTIES,
AND PROVIDING THAT A FORM SHALL BE PRESCRIBED BY
THE COMMISSIONER, WHICH SHALL BE SIGNED BY THE
INSURED AND THE VENDOR, STATING THAT NOTICE HAS
BEEN PROVIDED AS REQUIRED HEREIN.

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

SECTION 1. That Section 41-1824, Idaho Code, be, and the same is
hereby amended to read as follows:

41-1824. DELIVERY OF POLICY. — (1) Subject to the insurer's
requirements as to payment of premium, every policy shall be mailed or
delivered to the insured or to the person entitled thereto within a reasonable
period of time after its issuance except where a condition required by the
insurer has not been met by the insured.

(2) In event the original policy is delivered or is so required to be
delivered to or for deposit with any vendor, mortgagee, or pledgee of any
motor vehicle, and in which policy any interest of the vendee, mortgagor, or
pledgor in or with reference to such vehicle is insured, a duplicate of such
policy setting forth the name and address of the insurer, insurance
classification of vehicle, type of coverage, limits of liability, premiums for
the respective coverages, and duration of the policy, or memorandum
thereof containing the same such information, shall be delivered by the
vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgee
named in the policy or coming within the group of persons designated in the
policy to be so included. If the policy does not provide coverage of legal
liability for injury to persons or damage to the property of third parties,
adequate notice including, but not limited to, a statement of such fact shall
be printed, written, or stamped statement of such fact located conspicuously
on the face of such duplicate policy or memorandum shall be provided to
the insured, pursuant to rules and regulations adopted by the commissioner
of insurance. The commissioner shall prescribe a form, which must be signed
by the insured stating that he has received notification as required herein,
and by the vendor stating that he has supplied the notification as required
herein. This subsection does not apply to inland marine floater policies.

Approved March 20, 1971.